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TRIAL

OF

CHARLES B. HUNTINGTON

FOR

FORGERY.

PRINCIPAL DEFENCE: INSANITY.

PREPARED FOR PUBLICATION BY

THE DEFENDANT'S COUNSEL,

FROM FULL STENOGRAPHIC NOTES TAKEN BY

MESSRS. ROBERTS & WARBURTON, LAW REPORTERS.

NEW YORK:
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1857

TESTIMONIALS TO THE ACCURACY OF THE WORK.

This volume contains a faithful report of the trial of Charles B. Huntington. The evidence, charge of the judge, and arguments of counsel, were taken down by us stenographically, and we have no hesitation in certifying to the general accuracy of the work as published.

ROBERTS & WARBURTON,
No. 115 Nassau Street, N. Y.

New York, Jan. 14, 1857.

We have examined the report of the Huntington trial, made by Messrs. Roberts & Warburton, and feel pleasure in stating that it exhibits great accuracy and skill on the part of those gentlemen as stenographers.

E. S. CAPRON, City Judge.
A. OAKEY HALL, District Attorney.
JAMES T. BRADY, } Def't's Counsel.
JOHN A. BRYAN, }

We have examined our testimony in the Huntington trial, as reported by Roberts & Warburton, Stenographers, and certify to its entire correctness.

C. R. GILMAN,
WILLARD PARKER,
Medical Witnesses.

ERRATA.

On page 5, line 44, read "interpose *a* challenge," &c.
On page 76, line 38, read "*Carey* v. *Hotailing*, 1 Hill, 311."
On page 85, last line, read "*Comm.* v. *Chandler*, Thacher's Crim. Cases."
On page 120, line 22, for "has been," read "*is*."
On page 121, line 7, for "can get over," read "con over."
On page 285, line 30, for "at regular," read "at *ir*regular."

INTRODUCTION.

This volume, containing a faithful report of an important trial, is published by the Prisoner's Counsel. Their client having been convicted, they would not for trivial reasons perpetuate the evidence that their labors were unsuccessful. They are willing, however, to have their defeat commemorated, if they may thus to any degree promote the increase of valuable scientific knowledge or the purposes of humanity. And it is chiefly for these objects, that the present work is printed.

Huntington is now undergoing a felon's punishment. His case, remarkable in all its features, has special interest for the medical and legal professions in the circumstance that one defence put forward in his behalf was Insanity, of the species familiarly called "Moral."

The opinions on that defence given at the time by Drs. Parker and Gilman of this city, though not contradicted by any witness, have been freely and most unfairly censured in many journals and periodicals and by a large portion of our community. It is due to those gentlemen,—who, in their part of this case, performed, most intelligently, an honorable, and a very obvious duty,—to preserve, in such form as to prevent misrepresentation, the evidence of all they have said or done

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which elicits the comment of their fellow-citizens. They did not shrink from testifying on subjects connected with their education, profession, and experience; nor do they wish to avoid the responsibility attending what they have done. The error and prejudice of the hour must pass away, and the future will illustrate that the accuracy of those gentlemen is not inferior to their confidence.

It is the common notion that there is no such phenomenon in the world as "Moral Insanity." We cannot wonder that the multitude should thus pronounce, without knowledge, or seeking opportunity to know. They have ever regarded, and, for a long time to come, may still regard, with unwarrantable prejudice, every suggestion of insanity, whatever its characteristics, as an immunity against the consequences of crime. The advocate who presents such a defence, and the scientific witnesses who prove it, must expect, of course, to be opposed, if not derided—embarrassed, if not vilified. Men, who claim to be respectable and veracious, have, on no authority but vague and irresponsible rumor, insinuated, if not directly charged, that Huntington's pretended insanity was an invention, attributable, in equal proportions, to the desperation of the Counsel, and the folly of the Physicians. These charges, like many stories afloat as to immense sums said to have been received by those Counsel for their services, are utterly destitute of foundation. When it was ascertained that Huntington's career, viewed in its peculiar details, seemed utterly irreconcilable with any ordinary rules or exhibitions of human conduct, and only capable of being fully understood or explained on the supposition that his mind was not sound, a most careful inquiry was had into his whole history, and a minute and laborious examination made of all his transactions. Dr. Parker was consulted, that his intellectual capacity, learning, and experience might be applied in testing the condition of Huntington's mind—the distinct understanding

with that gentleman being, that the defence of insanity would or would not be presented, according as the clear and irrefragable proof to be obtained, demonstrated or disproved that hypothesis. At his suggestion, DR. GILMAN was associated with him to investigate the case. How well they discharged their duty appears from their testimony, which the reader will find interesting and satisfactory. It is lamentable, indeed, that the reputations of two such men should be so flippantly assailed, because they undertook a duty, from which they could not have shrunk without refusing the aid of their scientific attainments in the effort to develop truth and secure justice.

No one will deny this simple proposition :—that all men are either sane, insane, or idiotic. With idiocy we have not to deal at present. Sanity is a single and absolute condition. Insanity is equally so. But, there is this distinction between them. Sanity is exhibited in but one class of developments. Insanity shows itself in various manifestations. There is a wide difference between the quiet lunatic whose aberration is evinced in delusion on one subject, and the furious madman whom iron bars alone can securely confine. "MONOMANIA" is a word accredited in nearly all works relating to insanity. Its signification is generally understood. But learned men differ as to whether the generic condition of insanity should be divided into several species, each receiving a separate nomenclature. Therefore, the phrases "general insanity" and "partial insanity," though often employed by writers on Medical Jurisprudence, are by many (Drs. Parker and Gilman for example) rejected, as inaccurate, because insanity is not, in itself, general or partial. It exists or does not exist; and the condition must not be confounded with its manifestations.

Yet, for the convenience of ordinary or scientific philology, various designations have been attached to peculiar exhibitions of insanity, deriving their characteristics from the particular sub-

ject to which the aberration specially relates; as, for example, the "Homicidal Mania," "Pyromania," &c. It was strangely urged on Huntington's trial that, unless some name had been given to the individuality apparent in the exhibition of his insanity, the insanity itself should be denied. A fallacy so obvious might confirm or gratify Ignorance and Prejudice. It can not affect those who appreciate the very simple truth, that things exist irrespective of names.

As to "Moral Insanity," those who have considered the subject know that the existence of insanity thus classified is recognized by "all authoritative writers." It is an insanity developed in reference to the moral nature, rather than the purely intellectual processes. Whether the intellect may be generally intact and yet the affections, emotions, or will be impaired, is a question about which learned investigators differ. But none of those who deserve or enjoy any reputation doubt that insanity—as a physical disease of the brain—may be manifested, exclusively, in developments affecting the moral part of our nature. A most conclusive demonstration of this will be found in an appendix to this volume, from the pen of Dr. Gilman.

The professional reader will readily perceive that the Jury could hardly find in favor of the accused on the defence of insanity, however well it was sustained by proof; because the learned Judge expressly charged that, under our law, "moral Insanity" would not excuse from responsibility for crime; that insanity, if "partial" or "Monomania," would not absolve the party unless it "wholly" deprived him of the power to distinguish between right and wrong; and that the opinions of the medical witnesses were formed on a "principle not recognized in our law." This was in effect overruling the whole defence of insanity. To anticipate that, under such instruction, the Jury would acquit, was to indulge mere hope not warranted by any deliberate or reasonable expectation. The verdict rendered cannot, there-

fore, be justly considered a determination against the accused from any belief that the particular insanity alleged was not proved; or, that the opinions of the Doctors were not reliable; but that the whole *theory* of the defence was, in this respect, unfounded and could not be sustained by evidence of any nature or amount. To the Charge, in this respect an exception was taken, and it is not, perhaps, too much to say that the Judge here went farther than the law will justify.

It has been said that to admit a defence of moral insanity would almost, if not entirely, abolish the notion of crime necessary to the welfare of society, and expose mankind to the depredations and vices of their fellows without the means of protection. Now, it is not likely that the defence of insanity will ever be made, except upon much proof and due consideration; nor that it will prevail against public prejudice and violent opposition, unless most thoroughly and indubitably proved. The great danger, as shown by Dr. Ray and others, is, that it will be improperly rejected. And when humanity and mercy, guided by reason and science,come to regard the insane as objects of pity rather than vengeance, society will provide Refuges, of a condition intermediate between the State-prison and Lunatic Asylum, in which Unfortunates, while removed from the power to injure others, may escape undeserved punishment or degradation, and be afforded the attention and care suitable to those afflicted with the most terrible and mysterious of diseases.

The Prosecution complained in Huntington's case that the defence of insanity was a surprise to them. This seems quite remarkable when we consider that, in his opening speech, the able District Attorney applied the phrase "moral insanity" to the prisoner's peculiar proceedings. But the complaint was specious and unjust, because eight or ten days before that on which the testimony closed, Mr. Bryan fully opened the whole defence to

the jury. Huntington was in "The Tombs" from the 10th October —subject to examination not only by the intelligent Physician of that prison, but of any others whose judgment on his condition the Prosecution might desire. Yet not one witness was brought forward to gainsay any thing uttered by Doctors Parker or Gilman. It is hoped that there may be another trial of the prisoner; and the time is awaited with much interest when any gentleman of equal capacity or reputation with either of those Physicians will come into a court of justice to testify that there is no such thing known or worthy of being recognized as "Moral Insanity."

What may be the ultimate fate of Huntington, the future must develop. It is not at all remarkable that public prejudice should have made his defence difficult or unsuccessful. Thousands, who sneer at the idea of his insanity, believe in the most preposterous amongst the many delusions so rife in these days of Spiritual revelations, Mormonism, &c. Judges, in times past, who would hardly tolerate a suggestion of insanity, did not hesitate to encourage trials for witchcraft, nor to pronounce sentence of death on miserable old women convicted of Sorcery. Those who eagerly demanded the blood of a man condemned for murder, in this city, a few years since, and pretended to have clear knowledge of the nature and details of his crime, would not believe that he was dead, after he had committed suicide, and his heart had been taken out of his body in a public courtroom before a crowd of spectators! We would however, be much astonished at the treatment which Doctors Parker and Gilman receive from a few of their professional brethren, were we not acquainted with the fact that a jealousy exists amongst the members of that fraternity which is scarcely known amongst lawyers. "The American Medical Gazette and Journal of Health," for the present month, contains an editorial article in which the following passage occurs: "To talk of 'Moral Insanity,' as

affording an excuse for crime, and immunity from its penalties, while the intellect is unclouded, and this when the crime has been repeated almost daily for months and years *with all the* INGENUITY *and* SECRECY *and* ADROITNESS *of an accomplished financier*, is to offer an insult to the human understanding, an outrage upon the majesty of truth." Any one who reads the testimony in this volume will discover at once that the assumption contained in that part of this extract which we have italicized is utterly unfounded, and directly at variance with the whole tenor, and every detail of the truth. It was established beyond question that in no act of the accused, either of speculation or forgery, was there ingenuity, secrecy, or adroitness, but such an absence of each and every of those qualities, as to afford in itself strong evidence of his unsoundness. It is melancholy to find the editor of a work professedly scientific thus yielding to popular clamor, and assailing gentlemen of his own profession, in utter ignorance of facts. But time will correct such misrepresentations. The common sentiment of the hour allures the mass, and it is only by enduring, steady, and persistent effort that truth achieves a triumph over those who cannot or will not acknowledge its existence. This is particularly the case when, for the sake of a few afflicted creatures, the multitude are asked not only to surrender their prejudices, but also to encourage the hazard of danger to their persons or property. It may be long before society, in punishing the lunatic for acts of uncontrollable motive or impulse, cease to imitate the fabled example of Xerxes, who threw chains upon the Hellespont to restrain and punish that sea. But if there be any truth in the remark, with which we so constantly eulogize our race and age, that we are aiding civilization to beneficial progress, it may not be unreasonable to hope that the time must come when a scientific fact, entirely indisputable, will be recognized whatever may be its consequence; and the human being who, involuntarily and

from disease alone, loses natural control over either his will or his intellect, may be treated by his more fortunate fellow-creatures not as a criminal, to be loathed, but as an afflicted one to be cared for as enlightened and charitable experience may suggest.*

NEW YORK *January*, 1857.

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* The Publishers regret to find in this Volume several typographical errors; but it is due to the Printers to mention that these imperfections are attributable, in some measure, to the unusual dispatch with which the Publishers urged the work forward —the MS. being prepared, put in type and printed in about two weeks. The hasty preparation of the MS. will also account for the inaccuracies and incompleteness which will be discovered in some of the references to books and authorities.

TRIAL

OF

CHARLES B. HUNTINGTON,

AT THE

December Term of the Court of General Sessions

IN AND FOR THE

CITY AND COUNTY OF NEW YORK,

COMMENCING ON TUESDAY THE 16th DAY OF DECEMBER A. D. 1856.*

His HONOR ELISHA S. CAPRON, the City Judge, presided.

A. OAKEY HALL, Esq. (the District Attorney), with Wm. Curtis Noyes, Esq. and Ex-Recorder Talmadge, appeared as counsel for the prosecution.

Messrs. JAMES T. BRADY and JOHN A. BRYAN, appeared as counsel for the defendant.

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* "The trial of Charles B. Huntington was begun yesterday in this Court. Long before the hour appointed for the commencement of the proceedings, the room was thronged; and when the judge took his seat upon the bench, the swarm of curiosity had overflowed into the corridor, and dripping down the stairs, had formed a large human note of interrogation in the Park. Since the trial of Monroe Edwards, nothing in the way of forgery has excited equal interest. If the court room had been many times as large, it would have been crowded to excess before the judge appeared upon the bench.

* * * * * * * * * *

"During the proceedings of yesterday, Mr. Huntington was apparently as unconcerned as any ordinary spectator."—*Extract from Report of N. Y. Daily Times of Dec. 17th, 1856.*

"The prisoner was brought into court about eleven o'clock. His imprisonment appears to have had no perceptible effect on his general appearance; and so far as a casual glance might determine, he does not seem in the least depressed by the position in which he is placed. In fact, his expression, so far from denoting depression of mind or great anxiety, is of a hopeful character. The court room was crowded to excess, and the greatest interest was manifested in the prisoner. They crowded inside of the railings, anxious to get a glance at him as he sat beside his counsel; and so pressing did they become at last that the officers of the court were obliged to keep them within their proper bounds."—*From the N. Y. Herald, Dec. 17, 1856.*

Tuesday, Dec. 16, 1856: The Court opened at 11 o'clock A. M.

Mr. Brady: Will the District Attorney specify which particular indictment, he moves on for trial?

Mr. Hall, the District Attorney (selecting one): We move this indictment which alleges the intent to defraud Wm. H. Harbeck.

The Clerk, (Mr. Vandevoort): The defendant has not plead to it yet.

Mr. Brady: That is a mistake. The defendant was arraigned at the last term, and plead not guilty to all the indictments. He pleads not guilty.

Mr. Bryan rose, and addressed the Court as follows: May it please your Honor. We are ready to go to trial on one of the indictments charging the Defendant with an intention to defraud Charles Belden. The Court will recollect, that at the last term there were 27 indictments brought in against this Defendant, and when the learned District Attorney moved on one of those cases for trial he was requested to state the specific one upon which the accused should prepare himself; but as it was impossible to be ready for trial then, the case went off for that term. The District Attorney then selected three indictments; one charged the intention to defraud Harbeck, the next to defraud Belden, and the third to defraud Bishop. The circumstances connected with each one of those cases were, in many respects, peculiar and widely different. It therefore became necessary for us to call upon the District Attorney to specify upon which one of those three indictments he would have the Defendant tried. He did not then specify; but I left him with the understanding, that we were to have notice upon which of those three indictments the Defendant was to be tried *first*. We received no notice, although I called several times upon him to learn. Finally, when the trial of Baker was progressing at Newburgh, I went up there and saw him personally upon the subject; and he informed me that he should try the Defendant first on one of the indictments charging him with the intention to defraud Belden, and he particularly mentioned that the indictment alleging the intention to defraud Bishop, should not be tried first. That arrangement was entered into in the presence of my senior associate (Mr. Brady), and I left the District Attorney with that understanding. We have prepared ourselves to go to trial accordingly, and we are not now properly prepared to try an indictment alleging the intention to defraud any person other than Belden.

The District Attorney: There exists a very extraordinary misunderstanding in relation to this matter. I have no recollection of any thing of the kind. The learned counsel has been in and out of my office every day for the last two weeks, and nothing has been referred to excepting the three indictments; one charging an intent to defraud Harbeck, one charging an intent to defraud Belden, and the third an intent to defraud Bishop. What I told him was, that those three out of the 27 would be tried first. I did not know which of the three would be tried first. My intention is to try these three indictments one after the other. I do not suppose it makes any difference which is tried first. I only recollect at the hurried interview that took place between myself and my friend at Newburgh, that it was agreed that those three, and those three only, were to be tried first. We shall move on the Harbeck case.

Mr. Brady: If the prosecution is ready, as we assume they are, to try these indictments which have been specified, I can imagine no good

reason why the indictment charging an intention to defraud Belden, should not be first disposed of. I regret that there has been any misunderstanding on this subject, because in this case, as in all others, the learned District Attorney has conducted himself with liberality, fairness, and frankness. Certainly, my associate and myself were under the impression that Belden's case was to be tried first. Although these cases have a general resemblance to each other—although they are all indictments for forgery, yet the history of all these forgeries, as they are called, is dependent upon the transactions between Huntington and Belden, and by trying that case first, we would have a full exposure of all the facts and circumstances essential to determine the guilt or innocence of Mr. Huntington. As there are 27 indictments, and as the failure of one of these might possibly have great effect upon the disposition of the others, I submit to the court, that it would be highly conducive to the interests of the people, as well as just to the rights of the accused, that the Belden indictment should be tried first. There are peculiar reasons, not necessary to be now disclosed, but not connected with any peculiar advantage to the defence, why we think that indictment should be tried first. The case on the part of the prosecution here, would certainly be a very simple one in the presentation of it to the Jury. They have indicted a man for forgery; and their case, so far as their direct examination of the witnesses goes, will occupy but a short time. We have various defences in law and in fact, the merit or demerit of which will be passed upon by your Honor and this Jury; and if it should so happen that Mr. Huntington is convicted, then the legal question which must be disposed of, before there can be any final judgment upon any of these indictments, would arise in a more marked manner on the indictment charging an intent to defraud Belden, than any other here. We have certainly prepared our case upon that supposition, although we can go on and try the others. I should be reluctant to apply for any postponement; yet I do submit to the consideration of my learned friend, who knows the history of this case, that in view of what I have disclosed, and with the preparation we have made of this particular indictment, it would be right and proper. and no wrong to the public interests, to try that indictment first. I should be sorry to have an indictment tried which would disclose but a half, or a portion of the case, when by the trial of another the whole might be developed. I have suggested the possibility of Mr. Huntington being convicted; but if, on the other hand, he should be acquitted on the Belden indictment, then again my friend would have discharged his whole duty, because, as I understand it, all these indictments grow out of the transactions between Mr. Huntington and Mr. Belden. That is all I have to say upon the subject.

The District Attorney: All the errors which I commit in my public capacity, are due to the large liberality in respect to which the gentleman has so kindly complimented me. I regret that a misunderstanding has occurred between us, but there are reasons why we should try this Harbeck indictment first.

The Court: I suppose that is a matter resting in the discretion of the District Attorney. At all events, he has charge of all the indictments, and is presumed to know what his public duty requires him to move on first. I do not understand that it is for the Court to direct the District Attorney to put this or that case upon the calendar. I am not in possession of the facts to enable me to decide that question.

Mr. Brady: Do I understand your Honor to say, that there is no power in the Court to direct the District Attorney which indictment to try?

The Court: I do not see how I can know the condition of the public business—which of the cases the District Attorney is prepared to try, and which not. I sit here to try any thing he presents. It is true, I have control enough to secure to the defendant all his rights, as far as I know how to; but I am not aware that I have any power to control the District Attorney as to which case he shall try first, and which not. He is presumed to know which the public interest requires him to call on and try first.

Mr. Brady: This, may it please your Honor, is a peculiar case. It will turn out to be distinguishable from any case of forgery ever tried in the United States. My learned friend knows its peculiarity, and I think it would be to the welfare of the public if he were to select such an indictment as would develop all the facts.

The District Attorney: I am perfectly insensible of any difference in these cases, beyond this: That I know that the particular indictment I now move on, so far as the people are concerned, discloses more fully than any other the operations of this gentleman, and at a very late period in the history of these several transactions; and that it is an indictment which, as far as I can control it, will consume less time than any other, and give rise to less embarrassing questions. My selections are always made with a view to the saving of the public time, unless it infringes upon the rights of the accused. I know nothing beyond the fact, that this gentleman forged a note, as we say, with an intent to defraud Harbeck; and all the cases are of the same nature, only more incumbered with other transactions which we wish to shut out. I would observe that a day will probably be occupied in selecting a jury, and a further day for the prosecution to open their case. Now, the counsel associated with my learned friend (Mr. Brady), are known to be the most prompt men in the city, and certainly in the two days they can get up a defence, and arrange a cross-examination. Therefore, I feel less delicacy in pressing this on.

Mr. Brady: I must try the case, then, which the District Attorney moves on. If the Court has no power to order otherwise, we must submit. Your Honor will note an exception to your decision, that you have no such power.

The District Attorney: I will do every thing to facilitate the gentlemen to obtain access to books, papers, &c., and in the subpœnaing of witnesses.

PROCEEDINGS ON EMPANNELING THE JURY.

Ernest H. Halshaw, called and sworn. Challenged for principal cause, and examined by Mr. BRADY.

Q. Have you heard of these several indictments against Mr. Huntington?

A. I read of it in the *Herald*, and in the *Daily News.*

Q. Have you formed or expressed any opinion as to his guilt or innocence?

A. Not that I recollect. I have said, if the charges were true he should be punished. I will not be sure that I did say so, for there are a great many people come in my place. They may have spoken about it, and I may have expressed that opinion.

Q. Have you formed any opinion in your own mind? *A.* I have not.

Q. Do you believe what you read in the papers?

A. No Sir; I never believe any thing unless it is proven to me. I do not know that it was true, and therefore I do not believe it.

Q. You do not remember to have expressed any other opinion than the one you now mention? *A.* No Sir, I do not.

Mr. Brady, My challenge is not sustained of course.

The Juror here intimated to the Judge that he was too unwell to sit; and both sides consenting he was discharged.

Leonard Loveland, sworn—challenged for principal cause, examined by Mr. Brady.

Q. Have you expressed any opinion as to the guilt or innocence of the accused? *A.* Not that I remember.

Q. You read an account of the arrest of Mr. Huntington?

A. I did sir.

Q. Did you assume the statements to be true?

A. I presume I did, as far as his arrest was concerned. I supposed that was true.

Q. And did you assume the forgery was true?

A. I did not decide upon it of course, because there was no proof of it as far as I know—only parties stated they had notes which they received from him.

Q. You assumed that they were forgeries?

A. I supposed they were as far as we believe any thing we read in the daily papers.

Q. You believe as far as that, that he had delivered certain notes to persons, and that those notes were forgeries?

A. It was stated, by those whose names were signed, that they were forgeries.

Q. That made some impression upon your mind, of course?

A. Of course it made some impression, but not sufficient, I suppose, to prejudice him.

Mr. Brady: I interpose no challenge to the favor. The Court may try this juror.

The Court: What is the particular objection to the favor that you would urge?

Mr. Brady: Of course, if a person who is called as a juror has formed or expressed an opinion, he is held by the law not to be indifferent. I admit that the challenge for principal cause is not sustained; but if he has formed "an impression," as it is denominated—something less than a settled opinion—as to any of those facts, then I think he is not indifferent in the eye of the law. There is nothing that gives a man more offense than to tell him that he is prejudiced, for we all think that we are not prejudiced. What I claim in a case of this kind is, that he has read an account, from which he has assumed that forged paper was possessed by Huntington, and that he passed it to other parties; which is assuming a great deal of what is to be proved in this case, and therefore is not indifferent.

The District Attorney: I understand this matter to resolve itself into this: whether a man has formed or expressed an opinion, or has a bias favorable or unfavorable to the guilt of the prisoner, as to the particular transaction on trial.

Mr. Brady: His Honor Judge Strong directed Baker to be tried out of the city of New York, and sent him down to Orange County, although two juries had been successfully empanneled here, one of which disagreed, and, in consequence of the sickness of one of their number, the second jury was discharged. When the motion was made to change the place of trial, I took the ground that it had been demonstrated by the empaneling of two juries in this city, that we could get here a fair and impartial jury to pass again upon the cause. His Honor decided, that that was not so, and that he thought the state of public opinion was such in the Baker case—though I never had the pleasure to be informed where he ascertained the fact—that we could not in this city, after having successfully empanneled two juries, procure an impartial one. I refer to that case as authority upon this challenge; because it is obvious, from the statements of this witness, that these accusations against Mr. Huntington have been made the subject of newspaper publicity. We all know that it has been assumed by most of the press that he was guilty, as is usually the case. This being the case, and Judge Strong having given his judicial opinion and explanation of the difficulty of escaping from public feeling, I shall assume that this gentleman, who has read the papers, who has assumed that the bills delivered by Huntington were forgeries, cannot, however conscientious, and however fully persuaded in his own mind that notwithstanding the previous impression he can decide impartially, take his seat as a juror. Chief Justice Marshall, in an opinion known to all the profession, remarkable for its sound law and common sense, has said that a man cannot be trusted in reference to such matters—that men are often mistaken when they suppose themselves to be impartial and unprejudiced. I do not know this juror personally. I believe he is a builder, and from his answers we can all perceive that he is an intelligent and fair-minded man; but I submit that he has assumed certain things to exist which are not yet proved, and that there is an impression upon his mind adverse to us.

The Court: What did you understand him to say.

Mr. Brady: (to the Juror) I understood you to say that you read an account of this in the newspapers—that you had as much belief in it as usual in reading the papers; it was stated that Mr. Huntington had forged a paper, and if I understood you correctly, assumed that he had it in his possession, and it had gone out.

The Juror: Yes. It was stated in the papers that persons had said that the forged paper was not their paper; and therefore I supposed it was so.

The Court: This juror is called and challenged for principal cause, and that challenge has been withdrawn as not sustained. He is then challenged to the favor; and it must appear that the witness has a bias one way or the other—such a bias as would render him, in all probability, not indifferent between the people and the prisoner. Now, this bias ought to be between the prisoner and the people in reference to the *particular* charge contained in this indictment, for he is to *try that;* although there may be stories afloat that the prisoner forged a thousand papers, yet this may not be one of them, and it may. It seems to me that a person can hardly read a statement of any transaction without having an impression made upon his mind; and if the objection we are considering, which has I think been spun down to the smallest point, is adopted, I do not see how an intelligent man, having read a history of any transaction having reference to crime, can be a competent juror. No man reads an article without receiving some impression. But the impression made upon the mind of a person who is called as a juror, by reading any statement having reference to *that* transaction, should be such that he has the consciousness that he, by reading the testimony, would not readily yield to the evidence—that the impression made by reading the statement is a fixed, and not a mere casual one. In my judgment he is not an incompetent juror. I should call him, according to my view of the law upon that subject, indifferent and competent.

Mr. Brady excepted to the ruling of the court. The juror was then challenged peremptorily.

Thomas M. Lewis called—challenged for principal cause, and examined by Mr. Brady:

Q. I suppose you read the account of the arrest of Huntington?

A. Yes, Sir, in the papers.

Q. Do you remember in that account that the name of Phelps, Dodge & Co. was alleged to be forged? *A.* Yes, Sir.

Q. Did you form or express any opinion of Huntington's guilt or innocence?

A. I did not express any opinion that I remember.

Q. Did you form any? *A.* I think I did.

By the District Attorney:

Q. The opinion that you formed, was it as to Mr. Huntington's guilt or innocence of forging the name of Phelps, Dodge & Co., and passing the paper to Mr. Harbeck?

A. I formed the opinion that it was forged paper. With regard to its being passed to Harbeck, I do not remember? My opinion went so far as this—that if what I heard was true, the defendant was guilty of this forgery.

Juror set aside.

Joseph T. Harris called—challenged for principal cause, and examined by Mr. Brady:

Q. Did you read about these charges against Huntington?

A. Yes, Sir.

Q. What is your occupation? *A.* A real-estate broker.

Q. Did you read that some of the forgeries, alleged to be committed by Huntington, were paper of Phelps, Dodge & Co.? *A.* Yes, Sir.

Q. Did you form or express an opinion whether Huntington was guilty or innocent?

A. I formed an opinion from what I read in the papers. I took it for granted that the statement was correct, but as *ex-parte* evidence, of course. I do not think it would so bias my mind as to render me incapable of rendering a verdict in accordance with the evidence.

Q. Did you express that opinion? *A.* I do not remember that I did.

The Court: The juror says that he has read such a history of the case as was published in the papers, and states that, if that was true, he has formed an opinion,—but the evidence was *ex-parte*, and he does not assume that it was true. Assuming it were true, then he would think the defendant guilty: but he has not formed such an opinion as would prevent his finding a different verdict, if there was sufficient proof. Now, the question is, whether the juror, in that state of mind, is incompetent, on a challenge for principal cause. I have in my mind an old case where the juror answered almost in the same way, and it was there decided not to be a good principal cause. I so decide.

Mr. Brady: We except to your Honor's ruling. (Challenged to favor. Mr. Hunter and Mr. Carpentier appointed triers.)

Mr. Brady (resuming examination): I understand you to say that you have read about these charges of forgery against Huntington?

A. Yes, Sir.

Q. And part of the statement read by you was, that some of the forged paper was that of Phelps, Dodge & Co.? *A.* Yes.

Q. That you formed an opinion as to his guilt? *A.* Yes.

Q. But not such an opinion as would withstand rebutting testimony?

A. Yes, Sir.

Q. That you took for granted, the publication was correct? *A.* Yes.

Q. But if evidence against that appeared, you would decide according to evidence? *A.* Yes, Sir.

Mr. Brady: I ask your Honor to instruct the triers that it is not necessary, to sustain a challenge to the favor, that the juror should have obtained an impression as to the guilt or innocence of the accused upon the particular charge tried, provided that be one of a number of charges of the same kind, and his impression is as to the whole.

The Court: My opinion has always been that this bias must be in reference to the particular charge. A general bias would not come within the rule. The triers must be satisfied that the impression made upon the mind of the juror, from what he has read, has created such a bias in his mind as renders it probable that he is not indifferent, and that testimony given in the case would not be likely to lead his mind to a correct conclusion in reference to this particular case. I shall be obliged to confine it to that.

(Defendant's counsel took exception. The triers found the challenge true.)

Jonathan O. West challenged. Had formed an opinion, but not expressed it; further testimony would alter it. Had that opinion then. *Set aside.*

Charles H. Groves, challenged. Does not remember to have ever formed or expressed any opinion as to Huntington's guilt or innocence. Had met Mr. Dodge, but was not particularly acquainted with him. Assumed the narrative in the papers to be correct; but that did not make any impression on his mind. Had not thought a great deal about the subject.

Triers found the challenge to favor not true. *Juror sworn*, and took the place of Mr. Carpentier as a trier.

Harvey F. Minnerly called. Excused in consequence of sickness.

Simon Farrar called: Challenged for principal cause, by defendant's counsel:

Q. Have you formed or expressed any opinion whether Huntington is guilty or innocent of the charge of forgery? *A.* No, Sir.

Q. Have you read about it? *A.* I have, Sir.

Q. Did you read that Phelps, Dodge & Co., were named as some of the persons defrauded? *A.* I think I do recollect the name.

Q. Did not what you read make some impression on your mind?

A. It made an impression.

Q. As to his guilt or innocence of these forgeries? *A.* Yes, Sir.

(Challenge for principal cause withdrawn, and challenged to favor.)

By the District Attorney: Is that an impression or an opinion?

A. An impression.

Q. Not a fixed opinion? *A.* No, Sir.

Q. Did you ever hear, before to-day, that Mr. Huntington was charged by Mr. Harbeck with passing forged notes of Phelps, Dodge & Co. to him?

A. No, Sir.

Mr. Brady: I ask from your Honor the same instructions to the triers that I requested before: that it is not necessary, in order to exclude the Juror, that he should have formed an impression as to the guilt of the accused upon the particular charge tried; but that it is enough that he had that impression as to all the forgeries, of which the one particularly on trial is an instance.

The Court: I cannot consistently give the triers any different charge from that I have already expressed. It seems to me that the subject of investigation should be confined to the subject-matter of the trial.

Mr. Brady: We except to your Honor's charge, and also to your refusal to charge as we desired.

(Triers found the challenge not true.) *Challenged peremptorily.*

John Moneypenny: Had read an account of the transaction in the *Journal of Commerce.* Believed it to be as true as most other things in the papers. Believed it then, and now, to a certain degree. Saw nothing to contradict the statement in the papers.

Triers found the challenge to favor true. *Set aside.*

Morris L. Samuels called and challenged. Had not formed any conclusive opinion from what he read, of the guilt or innocence of the defendant. Did not believe all he read to be true. Whether it was true or not remained to be developed by the evidence.

Challenge withdrawn. Juror sworn, and took the place of Mr. Huntley, as a trier.

Frederick G. Foster called, and challenged by defendant's counsel.

Q. You no doubt have read the account of Huntington's arrest?

A. I am not aware that I read the account of his arrest. I read an account of some part of the notes he was said to have forged.

Q. You read some account of the transaction? *A.* Yes.

Q. Did you read among other things that the forgeries included the name of Phelps, Dodge & Co., *A.* I heard or read it. Which, I do not recollect.

Q. From what you heard or read have you formed or expressed any opinion as to the guilt or innocence of the accused?

A. I have come to the opinion that where there is so much smoke there must be some fire; that is, that where there are so many pieces of forged paper, he may have had something to do with forging one of them.

Q. You assumed that as to the quantity, then, that it was correctly stated that he had a quantity of forged paper? *A.* I understood so.

Q. You would require some evidence to remove that impression?

A. As regards that, I should feel that I could give a verdict according to the evidence.

Q. But you would take your seat with an impression already existing that he had something to do with that forgery?

A. I have expressed my opinion as clearly as I can, so far as I can analyze my mind.

By *Mr. Noyes*, for the prosecution.

Q. Is the opinion you have formed an absolute one, or simply hypothetical? *A.* It is not an absolute one.

Mr. Brady:—I ask your Honor to give the same instructions to the jury I formerly requested; and understanding your Honor to rule as before, we take exception.

The Court:—Gentlemen Triers, it is for you to decide whether this Juror stands indifferent between the people and the prisoner; whether he has any bias in his mind, no matter whether for or against the prisoner, that would be an obstacle in the way of his forming an unprejudiced opinion upon the testimony which should be submitted to him in this case.

Mr. Brady: And I understand him to say that he has formed this kind of an impression, from what he has read, that (to use his own illustration) where there is so much smoke there may be some fire; that the number of forgeries being so great, he had an impression that Huntington might be connected with some of the forgeries, but that it was not an absolute opinion.

Juror: That is so.

The triers found the challenge not true.

Challenged peremptorily.

Samuel Koffman called and challenged: Was in Europe at the time of the transaction. Since his return had heard a great deal in private circles about it. Had formed an opinion as to the guilt of the defendant.

Set aside.

Paul D. Burbank called; challenged by the District Attorney: Had formed an opinion as to the guilt or innocence of the defendant.
Set aside.

Arthur Dornen called and challenged: Had read and heard read columns as to the transaction, and had made up his mind as to the guilt of the defendant. *Set aside.*

William Holmes called; challenged by defendant's counsel:
Q. Have you formed or expressed an opinion as to whether Huntington was guilty or innocent? *A.* I have not.
Q. You read an account of his arrest?
A. Yes, Sir, the same as I read any thing else.
Q. Do you remember it was charged that he had forged on Phelps, Dodge & Co.? *A.* Yes.
Q. What paper did you read it in? *A.* The *Daily Times.*
Q. You have read something about it since?
A. I do not know that I have.
Q. Have you heard it talked over? *A.* No.
Q. Do you know any of the parties named in connection with the matter? *A.* No.
Q. Did you believe what you read to be true?
A. I supposed it was true, or else there would be nothing of it. I do not know that I believed it exactly.
Q. You believed that he had forged paper in his possession?
A. I supposed it was as the paper said.
Q. And that he passed some of it away, or uttered it?
A. I do not know that I read sufficient. I did not read all the particulars—only that something of the kind had been done.
Q. Did you form an impression as to whether he had or had not been connected with those forgeries? *A.* I cannot say that I did.
Q. What part of that statement did you take to be true?
A. I read the whole of it. I cannot remember any of the particulars.
Q. You had no doubt that he was arrested? *A.* No.
Q. You had no doubt that he was charged with several forgeries?
A. No.
Q. Did you not form some impression whether he was rightly or wrongfully charged? *A.* I cannot say that I did.
Challenge withdrawn. *Juror sworn.*

John Nicholson called and challenged: Had not formed or expressed any opinion on the question of defendant's guilt or innocence. Is not in the habit of forming an opinion on *ex-parte* evidence. Had no opinion as to whether the defendant was guilty or not.
Challenge withdrawn. *Juror sworn.*

Edgar Wright called and challenged:
Q. Have you formed any opinion as to whether Huntington is guilty or innocent? *A.* No fixed opinion.
Q. Any opinion?
A. Yes, I have formed an opinion from reading it.
Q. Did you form it from what you read in the paper.

A. Yes, Sir, from what I read and heard.

Q. Did you read that Phelps, Dodge & Co. were among the persons whose paper was said to be forged? *A.* Yes.

Q. Do you remember the name of Harbeck in connection with the transaction? *A.* No.

Q. The opinion that you have formed, did you express it?

A. No, Sir, not that I am aware of.

Q. But you have it still?

A. Yes, I formed an opinion from what I read and heard.

By Mr. Hall: Was that an opinion whether Huntington was guilty or innocent of the imputed forgery?

A. It gave me the impression that he was guilty.

Mr. Brady: I understand your Honor to give the same instructions as before to the triers, to which we except.

The triers found the challenge true. *Set aside.*

George Lazarus called: Had formed nor expressed no opinion as to the guilt or innocence of the defendant, and had no impression on the subject. Challenge withdrawn. *Juror Sworn.*

John Moller called, and challenged: Had heard the charge against Huntington spoken of, and had formed an opinion as to his guilt. *Set aside.*

De Witt C. Vanderbilt called, and challenged: Had heard and read about the charge against the defendant, had formed an opinion as to his guilt, which opinion he had then. *Set aside.*

Wm. Silligman called, and challenged: *Q.* Have you formed an opinion as to whether Huntington is guilty or innocent?

A. I always thought I formed an opinion until I came up here, and found that it was not an exactly legal opinion. I have read the charge in the papers, and I must confess it would require a great deal of evidence to change the opinion I have formed. *Set aside.*

Edward C. Baddeau called, and challenged: Had formed an opinion, which he still retained. *Set aside.*

Robert F. Newcombe called and challenged: *Q.* Have you formed or expressed any opinion as to Huntington's guilt or innocence?

A. I have not, Sir.

Q. Have you heard the matter spoken of, and spoken about it?

A. Yes, Sir.

Q. Did what you have heard or read make any impression upon your mind? *A.* No, Sir.

Q. Is that from any special reason, or from your general habit?

A. My general habit. I never form an opinion upon what I see in the newspapers until I see both sides.

By Mr. Hall:

Q. Are you acquainted with Mr. Huntington?

A. No, Sir, I never saw him.

Challenge withdrawn. *Juror sworn.*

Wm. Goodkind called and challenged: *Q.* Have you formed any opinion as to whether Huntington was guilty or not?

Q. Not exactly, Sir. I have formed an impression. Have that impression still.

Triers found the challenge true. *Set aside.*

Joseph Beasley called. Had formed an opinion about the guilt of the defendant, and had that opinion yet. *Set aside.*

Peter Lewis called. Had formed an opinion whether Huntington was guilty or not. Retained that opinion. *Set aside.*

Henry Pincus called and challenged. *Q.* Have you formed or expressed an opinion whether Huntington was guilty or innocent?

A. No, Sir, I have not.

Q. Did you see it stated that he had forged paper on Phelps, Dodge & Co.? *A.* I believe that was the name, Sir.

Q. What you read; did it make any impression on your mind?

A. Yes, it did.

Q. An impression which it would require testimony to remove?

A. I could not give an opinion unless I heard the contrary side. I would like to hear the contrary side, to know whether the gentleman was guilty or not. I have no impression now.

Challenge withdrawn. *Juror sworn.*

Abraham I. Felter called and challenged.

Q. You are a builder? *A.* Yes.

Q. Have you formed an opinion about the guilt or innocence of Huntington, in this matter? *A.* No, Sir.

Q. Have you expressed any? *A.* No, Sir.

Q. Have you read about it in the papers? *A.* Yes, Sir.

Q. Did what you read make an impression?

A. It made an impression so far as this, that if what I read was true then I would come to a conclusion in my mind.

Q. Did you assume it to be true?

A. I assumed it so far as the statement went in the paper, but not that it was true. If it stated what was true, then it was true.

Q. Did you make up your mind whether it was true, or not?

A. No, Sir.

Q. You think you have no impression on your mind as to whether he was guilty or innocent?

A. No further than if what I read was true. *Challenged peremptorily.*

Samuel D. Woodruff. Had formed an opinion. *Set aside.*

Otto Fitch. Had expressed an opinion relating to Defendant's guilt. *Set aside.*

Michael Walter. Had formed an opinion as to the guilt of the Defendant. *Set aside.*

David Bailey called, and challenged.

Q. Have you formed or expressed an opinion about the guilt or innocence of Huntington? *A.* So far as the account I read in the papers.

Q. Have you expressed an opinion? *A.* I do not think I have.

Q. Did you judge whether the statement in the paper was true or not?

A. I supposed it was a statement of the facts.

Q. It would require evidence to remove your impression? *A.* Yes. *Set aside.*

Zadock Gomprecht called: Had formed an opinion, so far as what he read in the papers, that the defendant was guilty. *Set aside.*

Edward Eldridge: Had both formed and expressed an opinion. *Set aside.*

Abiel Hayward: Had formed an opinion on the guilt or innocence of the defendant. *Set aside.*

Joseph Cristadoro called and challenged:

Q. Have you formed or expressed an opinion as to the guilt or innocence of Mr. Huntington? *A.* Not particularly.

Q. Have you heard it talked about? *A.* Yes, Sir.

Q. Has not that made an impression on your mind?

A. Not the slightest, Sir, until I have heard both sides.

Challenge withdrawn. *Juror sworn.*

Wm. H. Kipp called, and challenged:

Q. Have you formed or expressed an opinion?

A. No, Sir, not to my knowledge.

Q. Did you read an account of the transactions?

A. I read some portions of it.

Q. Some time ago, or recently? *A.* When first in the papers.

Q. Did that make an impression on your mind as to whether he was guilty or not?

A. No, Sir, I never make up my opinion from what I see in the newspapers.

Q. Have you no impression on your mind as to whether this defendant is guilty or not of the crime of forgery? *A.* None at all.

Challenge withdrawn. *Juror sworn.*

Wm. Wood called, and challenged by defendant's counsel:

Q. You have heard the questions. Tell us about the state of your mind.

A. I have formed some opinion as to the probability of his guilt or innocence—no farther.

Q. Founded on the assumption that the statements in the paper were correct?

A. Yes, Sir. If it was true, I have formed an opinion.

Q. Did you assume either way about that in your mind?

A. I thought one would be more likely than the other. I did not settle the question.

Q. When you read a statement in the newspaper, you assume that about a fair statement of the matter?

A. I do, if it is continued any time, published in different papers and not contradicted.

Q. Would it require some testimony to remove your impression?

A. Yes, Sir, it would require some.

By the District Attorney.

Q. You have no settled opinion? *A.* No, Sir.

Q. Do you take the matters stated in the newspaper to be true as matter of course? *A.* As probably true—nothing further.

Q. Supposing that on this trial, or anywhere else, a statement of facts different from what you saw in the paper should be given, what is the state of your mind as to passing on those facts?

A. I should be uninfluenced by what I read before.

Mr. Brady again noted exception to the Court's refusal to charge as before requested.

Challenge found not true. *Juror sworn.*

George Foster called. Challenged by defendant's counsel.

Q. Have you formed or expressed an opinion, whether Huntington is guilty or innocent of this crime of forgery with which he is charged?

A. I have a very strong impression.

Q. Is it an impression that would require testimony to remove?

A. Yes it would.

Set aside.

Alfred C. Badger. Had formed an opinion.

Set aside.

Alexander Edgar challenged.

Q. Have you formed or expressed an opinion? *A.* No, Sir.

Q. Has what you read or heard made an impression on your mind?

A. Never.

Q. Do you know any of the parties? *A.* No, Sir.

Challenged peremptorily.

Caspar Carr challenged: Had formed an opinion. *Set aside.*

Edward Reed challenged: Had formed an opinion. *Set aside.*

William H. Dayton challenged by defendant's counsel:

Q. Have you formed or expressed any opinion as to Huntington's guilt or innocence? *A.* Not that I recollect.

Q. You are not aware of having any such opinion?

A. I do not think I have.

Q. Have you any impression upon that subject?

A. Yes, I have, since I came into court.

Q. An impression requiring testimony to remove? *A.* Certainly.

The Court: I think when a juror comes into court unprejudiced, and forms an opinion only from what he sees in the court-room, it should not render him incompetent.

By the District Attorney.

Q. Do you know any of the facts in this case?

A. I do not recollect any of the circumstances. I paid very little attention to it.

Q. The impression you have is not based upon any knowledge of facts?

A. Nothing except present facts. The fact of his being indicted would require some testimony to make me believe him not guilty. I do not think we often indict innocent men.

Mr. Brady: I have a word to say. Gentlemen Triers, I have abstained from making any observations to you in reference to the qualifications of citizens put upon the stand as jurors; and I have done so intentionally, because my learned friend and myself are desirous to have a jury empanneled at the earliest practicable moment, and have this case disposed of during the present term. I think I might have thrown great obstacles in the way of getting a jury in this case; but that was not our object. You have to determine, as you have done in a great many instances, whether this gentleman is qualified to serve as a juror with you. I respectfully submit that he is not—that the law so pronounces, and that it will be in accordance with what I understand the gentlemen triers to have determined in the other cases. He is not a competent juror. I will state my reasons. His Honor, the Judge, has said in your hearing, that it is his impression, that if a man had formed an opinion about a case, or a decided impression, or any impression, after coming into a court at which a trial is to occur, that that should not be held to disqualify him. As matter of law, I need not discuss that, for there is no occasion for it. His Honor will tell you that when he presents *facts*, they are not to control you for no one knows better than he the distinct prerogatives of courts and juries. (To the Court.) When your Honor stated that you supposed that ought not to disqualify him as a juror, you meant to say as *matter of law.*

The Court: Yes, certainly.

Mr. Brady: Gentlemen, as I have said before, and it is my humble judgment of human nature, that of every thing living within the breast of almost every man created, which he is most unwilling to acknowledge the existence of, it is prejudice. If men who in past ages have burned their fellow-creatures at the stake—subjected them to martyrdom for their religious or political opinions, had been told that they were actuated by prejudices, they would have considered it a slight upon their personal character. It is the same with a man having an impression. Put him upon the stand, and ask him if he could try a cause, entertaining an impression against a prisoner, and he would almost invariably answer in the affirmative. Is there a man with a decent face who would swear he could not decide according to the evidence? How does anybody suppose that? I admit it to be the law of the land, that the mere formation of a conjectural impression—a slight impression that if certain things be true a party is guilty or innocent—of itself is not sufficient to disqualify him; but I contend that if the impression be one which has so affected the mind, that the juror would go into the box,—not having his mind like a clean sheet of paper upon which impressions would be written, but having upon his mind things to be erased,—he would not be indifferent. This question was discussed in the *People* vs. *Mather* (4 Wendell 229), in regard to the abduction of Morgan; and in the course of that trial the sentiments of Chief Justice Marshall, to which I have already alluded, were referred to and expressed. He said that a man is not to be trusted as a judge whether he is or is not impartial, and

Ken. Hall

when a juror is put upon the stand and challenged, his fellow-men try him. You take his testimony. You will assume, of course, that he is honest, and fair-minded; but unless you think that he is entirely disinterested to serve as a juror you will exclude him, notwithstanding his own conviction that he is, as you have done here in two or three instances. I understand the testimony of this gentleman to be this: He has no opinion. If he had he would have been rejected on the challenge for principal cause; for the law says that if a juror had formed or expressed an opinion he must stand aside, arbitrarily, without inquiring what it is formed upon, or how strong it is. That has been done in several instances. If he has not formed or expressed an opinion, so that the challenge for principal cause is not sustained, then it is for the jury to say, upon challenge to the favor, whether he stands indifferent or not. But this juror says that when he came into court here he formed an impression, in relation to the guilt or innocence of the accused which it would require certainly some testimony to remove; and then he adds, that he infers, from the fact of the indictment being found, that there must have been something to warrant the accusation, and, therefore, an additional reason. That is my understanding of his testimony, and he still retains this impression. Now, the class of men usually summoned as grand jurors in the city of New York are of the highest respectability and intelligence; but there are exceptions, for some of the most notorious ruffians in the city are to be found there. The Grand Jury is a very respectable, useful, and ancient tribunal; but when our friend upon the stand attaches to it such purity and solemnity as to assume that it does not find indictments against people who are entirely guiltless, he maintains a better opinion of that institution than anybody well acquainted with its proceedings. Many indictments during every term are never brought to trial. There are many indictments in cases where the prejudices and passions of women are concerned, which are seldom brought to trial, and, if these cases come into court, they generally result in an acquittal. By a reference to the statistics of those cases you would be very much astonished or amused. An indictment by the Grand Jury is, in the eye of the law, regarded only as an accusation. But if a citizen thinks that from the fact of a man's being indicted he would require testimony to remove an impression of his guilt, the consequence must be that he considers the accused guilty until the contrary appears. I conceive, therefore, that this gentleman having formed that impression (and frankly and fairly stated it), whether it originated this morning or a month ago, should not sit. The difficulty is this, and I will state it to you frankly, because you are empaneled in this case, and in conjunction with your fellows, Mr. Huntington must stand or fall:—I have no doubt that the majority of people think, if a man takes a piece of forged paper and passes it to another that he must be convicted upon that state of facts—that that constitutes the crime of forgery. It does not. The crime of forgery is not committed unless a man intends to defraud somebody. Now, as this juror seems to think that the accused had forged paper in his possession, and passed it out, although he may be impartial as he thinks, he is not in a condition to be sworn.

The District Attorney: You will observe, Gentlemen, that this juror has read the newspapers in relation to this matter, and nevertheless he has come into court without an impression or opinion. Now he says he has an

impression one way or the other; and the learned counsel says that it is such as to disqualify him from sitting in the box. Why, I have known jurors to come into court, and form an impression that the prisoner was guilty because he had plenty of counsel to defend him, and that if he had not been guilty he would not have had so many. It might be that he came into court, and seeing that Mr. Brady defended the prisoner, came to the conclusion that he was innocent because Mr. Brady never defended guilty persons. Or he might come and say, "From my knowledge of Mr. Noyes I am sure the accused is guilty, for Mr. Noyes never would prosecute an innocent man." All these prejudices amount to nothing. It must be an impression against the prisoner or for him, springing out of the facts of the case which he has heard. No facts have been discussed this morning. Mere prejudice or collateral impression formed from outside matters, we have nothing to do with.

Mr. Brady : I submit to the triers if they believe that any man sought to be placed on the panel entertains a prejudice against the prisoner or a bias in his favor from the character of his counsel, it is an excellent reason that he should be rejected. If any man has formed an impression in this grave case from any of the accidental circumstances, such as there being two counsel for the defence and three for the prosecution, why, I think that ought to disqualify him from serving upon a jury. But a very learned judge, and a very honest judge and a very upright judge, but like other men liable to strong prejudices, in this city told the jury in a capital case that the defence could not be very strong for the reason that the counsel for the accused occupyed nine hours in summing up. Now, if he had been called as a juror, and had said that he had inferred any thing against the accused party from his counsel, he ought not to be taken.

I ask your Honor to charge the triers, that if they believe that this man has an impression upon his mind, relating to the guilt or innocence of Huntington in respect to the general forgeries, though not in reference to the particular indictment upon trial, and that impression can be removed only by evidence given after he is sworn as a juror, he is disqualified.

The Court :—You are now, after what you have heard from the counsel, to decide the question, upon what the juror who has been sworn before you has said, whether he stands indifferent in this case,—whether if he takes his seat with you he will do so as an unbiased juror, one who can hear the evidence in the case, and decide upon it according to the best of his ability, without being prevented from coming to a correct conclusion by any preconceived opinions or prejudices that he may have had before he heard the testimony. You ought to be exceedingly anxious that the prisoner should have an impartial jury so far as depends upon any action of yours. I am, so far as depends upon any action of mine. I would prefer that a competent juror should stand aside, rather than that an incompetent one should be admitted into the panel. After all, we are governed by rules of law and reason in this matter, and we are to decide it according to the best lights we can get. It is my opinion as the law of this case, that any impressions which a juror may receive from the circumstances surrounding the trial at the time of the trial, after he has been subpœnaed and appeared here, ought not to exclude him as a juror; and my reason is this: there are now several jurors sworn who are competent, who are upon the panel and cannot get out, and yet the circumstances transpiring here before we begin to take

evidence may create some impression upon their minds. If that was to exclude them, although they have passed the ordeal of an examination, and have been decided to be indifferent, within that rule they would not be indifferent. They are now in fact indifferent, although they may have received some impressions since empaneled, if they were indifferent originally. I think a juror should come to court with some impressions about the case, some interest towards the prisoner, or some views of his guilt or innocence, which influence him one way or the other. That it should be a feeling that he brings with him—that he has when subpœnaed or gets before he comes to court. If the juror says that he has no prejudice, no bias, formed no opinion in the case, but that he has received opinions or impressions from what has transpired since he has been sitting in court and listening to the proceedings, even then I should think him competent as a matter of law; but if he comes here with opinions formed, or with a bias from any cause, no matter what, if he is satisfied that he had it when he came here, then it would be your duty to find that he was not a competent juror.

Mr. Brady :—Will your Honor note an exception to that part of your charge where you refer to a juror forming an impression in court?

The triers found the challenge not true.

Mr. Brady :—I claim the right to challenge him peremptorily.

The District Attorney :—You are limited to five peremptory challenges, where the punishment cannot exceed five years. We shall not, at any stage of this case, claim any thing more than that it is forgery in the third degree.

The Court :—I do not see how it can be any other. You cannot challenge him peremptorily, as your challenges are exhausted.

Defendant's Counsel excepted.

The juror was sworn and took his seat.

Horace H. Ladd, challenged. Had formed an opinion. *Set aside.*

John Hunter, challenged. Had both formed and expressed an opinion. *Set aside.*

Jackson Young, challenged. Had formed an opinion. *Set aside.*

Charles B. Hedden, challenged. Had both formed and expressed an opinion. *Set aside.*

James P. Kinsey called, and challenged.

Q. Have you formed any opinion as to the guilt or innocence of the Defendant? *A.* No, Sir.

Q. Do you know any of the parties? *A.* No, Sir.

Q. Did what you read make any impression on your mind as to whether Huntington was guilty or not? *A.* No, Sir.

Q. No impression whatever?

A. No, Sir. I did not read enough of it, only items now and then.

Q. You read enough to show he had been charged with forgery?

A. Yes, Sir.

Q. Did you make up your mind as to whether that statement was true, or not? *A.* Not exactly.

Q. You were present when the matter was talked over?

A. I cannot remember.

Q. Does the circumstance of a man's being indicted, in any way affect your opinion as to his guilt or innocence? *A.* No, Sir.

Q. Do you remember any of the names mentioned in connection with Huntington's arrest? *A.* Phelps, Dodge & Co.

Q. Have you come to the conclusion that the defendant had forged paper in his possession?

A. I cannot say whether I did or not. I do not believe all I read in the papers. I cannot say I positively believed this, because it was not substantiated when I read it. *Challenge withdrawn. Juror sworn.*

The Jurors thus empanneled, were the following:

CHARLES H. GROVES, Umbrella and Parasol Manufacturer, No. 44 Vessey Street—Foreman.

MORRIS L. SAMUEL, Commission Merchant, No. 73 Nassau Street.

WM. HOLME, Soapmaker, No. 108 Charles Street.

JOHN NICHOLSON, Dry Goods Merchant, No. 93 Liberty Street.

GEORGE LAZARUS, Boot and Shoe Maker, No. 231 Center Street.

ROBERT T. NEWCOMB, Dry Goods Merchant, No. 715 Third Avenue.

HENRY PINCUS, Umbrella Manufacturer, corner of William and Cedar Streets.

JOSEPH CRISTADORO, Wig-maker, No. 6 Astor House.

WM. H. KIPP, Liquor Store, corner of West Broadway and Reade Street.

WM. WOOD, Music Teacher, No. 575 Broadway.

WM. H. DAYTON, Broker, No. 96 Franklin Street.

JAMES P. KINSEY, Sash and Blind Maker, No. 127 Forty-first Street.

The usual hour of adjournment having arrived, the Court gave instructions to the jury not to converse with any one, or among themselves on the subject of the trial, and not to read any thing on the subject; and the court was thereupon adjourned until Wednesday (to-morrow) morning at 11 o'clock.

The following is the indictment on which the Defendant is to be tried.

City and County of New York, ss.

The Jurors of the People of the State of New York, in and for the body of the City and County of New York, upon their Oath, present:

That CHARLES B. HUNTINGTON, late of the First Ward of the City of New York, in the County of New York aforesaid, on the first day of July, in the year of our Lord one thousand eight hundred and fifty six, with force and arms, at the Ward, City and County of New York, aforesaid, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting, a certain instrument in writing for payment of money commonly called a promissory note, which said

false, forged and counterfeited instrument in writing (commonly called a promissory note) for payment of money, is as follows: that is to say,

$6500. New York, July 1, 1856.
Four months after date, we promise to pay to the order of ourselves, Sixty Five Hundred Dollars at the Bank of Commerce, value received of Minnesota Mining Co.
PHELPS, DODGE & CO.
No.
Due Nov. 1.

with intent to injure and defraud WILLIAM H. HARBECK, and divers other persons to the jurors aforesaid unknown, against the form of the statute in such cases made and provided, and against the peace of the People of the State of New York, and their dignity.

And the Jurors aforesaid, upon their Oath aforesaid do further present:

That the said CHARLES B. HUNTINGTON afterwards, to wit, on the day and year last aforesaid, with force and arms, at the Ward, City and County aforesaid, feloniously and falsely did utter and publish as true, with intent to injure and defraud the said WILLIAM H. HARBECK, and divers other persons to the jurors aforesaid unknown, a certain false, forged, and counterfeited instrument in writing for payment of money, commonly called a promissory note, which said last mentioned false, forged and counterfeited instrument in writing commonly called a promissory note for payment of money, is as follows, that is to say:

$6500. NEW YORK, JULY 1, 1856.
Four months after date we promise to pay to the order of ourselves, Sixty Five Hundred Dollars at the Bank of Commerce value received of Minnesota Mining Co.
PHELPS, DODGE & CO.
No.
Due Nov. 1.

the said CHARLES B. HUNTINGTON at the said time he so uttered and published the said last-mentioned false, forged and counterfeited instrument in writing (commonly called a promissory note) for payment of money, as aforesaid, then and there well knowing the same to be false and counterfeited, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York, and their dignity.

A. OAKEY HALL, *District Attorney.*

SPEECH OF MR. HALL.

Wednesday, Dec. 17, 1856.—The court met at the usual hour, when the District Attorney, A. Oakey Hall, Esq., opened the case for the prosecution as follows:—

Gentlemen of the Jury,—

The throng of people which yesterday and to-day filled this hall of justice, that little battalion of reporters which is upon your right, speaking by their magic hieroglyphics to the millions of the great newspaper world without this little audience, attest that I have the ordinary routine of my official business interrupted by what is called "a case of public interest." The presence of my learned friends in such force (to illustrate this trial, as they do every other, by their courtesy and by their learning), attest that the prisoner himself shares in the knowledge that this is a case, not only of public interest, but of great private importance to himself. The presence, too, of the learned seniors of my profession who are associated in this prosecution, show that the public possess a stake in this matter that is greater than has been given by the ordinary routine with which you and I, this term, have been so far familiar.

Why, the very deliberation, carefulness, and scrutiny with which your motives were looked at—your very hearts pried into by the cross-examinations of my ingenious friends on the several challenges—show that these remarks are just, and that the duty you are now to enter upon is one which, in the estimation of the judge upon the bench, of the defence, and of the prosecution, calls for your most earnest attention, and your most conscientious deliberation. It is not here as in the civil courts (where you have no doubt served), a mere question between man and man, a mere debate of private right and private wrong; but you are, upon the one hand, called to press down the scales which justice holds—the scale of exemplary guilt,—or, upon the other, touch that little balance where mercy and charity, surrounding justice, moves towards an acquittal.

This is a criminal action between the people of the State of New York and the prisoner at the bar. The people, who are now thronging at yonder door—who are in this court room—who are in this great metropolis—*they* are my clients, *they* are the plaintiffs;—an aggregation, a collection of "many men, of many minds," for wrong as well as for right, and yet very difficult to appreciate as a whole. As a client, as a plaintiff, scarcely recognizable; while you have before you the unit in this case, out of the millions who surround us, asking, as he has a right to do, your justice,—challenging, it may be, your sympathy.

Now, I deem it my duty, at the very outset of this case, to

invite your attention to this distinction, that you may appreciate the oath which you have taken—true deliverance to make between this same people of the State of New York, and this prisoner at the bar—that you may not forget the great plaintiff who is without, in your sight of the unit defendant. Why, yourselves and myself, as citizens—your fellows whom you left this morning—your neighbors—your friends, are the plaintiffs in this criminal action. There is no private wrong that is to be gratified here to-day—no private malice that is to be answered—no matter of damage to be estimated by dollars and cents. Therefore, Gentlemen, you will at once appreciate that when the criminal action began from the people of the State of New York against this defendant, there became an interest due, first—to yourselves, as citizens controlled by your oaths, and, secondly, as jurors, and it may be to some extent as legal automata in the hands of the court, whenever certain cases and circumstances arise.

This criminal action is brought before you in this light—not as a matter of fancy upon my part, but as a matter of record. *This* little bit of paper (holding up the indictment) tells the story of the wrong which this plaintiff—this people—have suffered. It is the record of the court—the indictment; and its endorsement runs, as I have told you, "THE PEOPLE *versus* CHARLES B. HUNTINGTON." This is the pleading on the part of the people, its sentences, sought to be artistically constructed, charging a specific offense; and the defendant's answer is embraced in two simple words, "Not guilty." "The jurors of the people of the State of New York, in and for the body (as I have told you) of the city and county of New York, upon their oaths present (to your deliberations regarding the facts), that Charles B. Huntington, on the first day of July last, feloniously (as a matter of felony), did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged, and counterfeited, and willfully act and assist in the false making, forging, and counterfeiting, a certain instrument in writing for payment of money, commonly called a promissory note, which false forged, and false counterfeited instrument in writing, commonly called a promissory note, for payment of money, is as follows (that is to say, the note, which is a thing of itself, down to the end of the signature, the endorsement being another part of the note):—

New York, July 1st, 1856.

$6,500.

Four months after date we promise to pay to the order of ourselves $6,500 at the Bank of Commerce, value received of Minnesota Mining Company, due Nov. 4th.

PHELPS, DODGE, & CO.

With intent to injure and defraud William H. Harbeck, and divers other persons to the jurors unknown, against the form of the statute in such case made and provided, and against the peace of this people of the State of New York."

There is a second allegation, charging that if he he did not forge, if he did not make it, if he did not assist in making it,—he did utter that note against the form of the statute in that case made and provided, against the peace of the people of the State of New York in that behalf; and in each instance it will be forgery in the third degree. Now, it is very singular, and something which eminently challenges the attention of the legal scholar, to know when and how and why the encyclopedia of criminal law robbed the dictionary of honest labor of the word FORGERY. You will not be able to find why and wherefore that the spendthrift sitting at his desk in secret—in self-imposed exile from the social community—alone with his crimes and his vices, should do that according to the nomenclature of the law, which the arm of honest labor does as it strikes upon the anvil—forge—forgery! And yet through many years it has come down to us to mean that worst, that meanest, that most despicable of all the commercial lies which a man can tell, or which a man can make,—a black lie and a white lie at the same time. One would think, as a man sits down at his desk to make a little forged lie that the whiteness of the paper might teach him something of hesitation,—might induce him to pause, when the type of the crime came upon the paper to stain it as the very thought and the very intent of his crime has stained his soul. Yes, one of the worst of lies. A lie so hard to guard against—a lie which takes away not only the good reputation of the commercial community in the particular instance where it falls, where it is forged, where it strikes, but seeks to take away the good commercial name and reputation of men who for years and years have built it up in your midst;—a lie which is sometimes told to the injury of a man's best friends in this world (for your lying forger spares *no one*, so that it serves *his* purpose). Many years ago the crime existed under its own name of that time, and despotism laid its strong arm upon and stamped the crime with abhorrence—that despotism which, however politically it may become an evil, has at least this alleviation, that it punishes crime promptly, and it judges crime equitably at the same time that it punishes promptly. In the reign of Justinian the forger was condemned to banishment—to exile. Observe the very accordance of the punishment with the crime. He who exiled himself by his own intent to injure and defraud his neighbor—exiled himself in solitude to perpetrate his crime—was condemned in solitude most fit to expiate it. As he had exiled himself from his fellows in the manufacture of the crime, so he was exiled from his fellows in the exemplary punishment the law gave to it. But commercial spirit decayed, and commerce fell; and as one of the consequences of that decline, we find in the early history of the common law forgery was only a misdemeanor punished by personal degradation. The man stood in the pillory with his ears cut,—an object of abhorrence, an object for scorn

"to point his slowly-moving finger at,"—the liar—the commercial liar! Commerce progressed, and had its various ramifications throughout England, and throughout the world. The machinations of the forger increased with his opportunities for it in the commercial world; and then as the opportunities of commerce increased with the opportunities of the forger, the statute came in, and at one time the forger was punished with death. That continued until the statutes of William the Fourth very singularly, and perhaps as the best stamp of the equity of the law, went back more than a thousand years to this very reign of Justinian, and again transported the forger to exile. Such continues to be the punishment in England until the present day.

Now, whatever there may be in the character or appearance of men who forge, I will venture to say that there is nothing in the character of the crime that calls for sympathy. I have sometimes seen the burglar come up to this bar, and have felt a sort of physical admiration for the man—for his desperate look, his desperate deeds—as one would admire the gladiator should we see him, as we sometimes physically admire him as we read of him. I have even sometimes in the performance of my duty felt a sympathy with the provocations of the manslayer. But for your false pretender, who steals your money by exhibiting a lie, and for your forger I never could entertain any sympathy.

Now what says our Statutes? The revisors who undertook to mold this whole law of forgery into a little sentence, as regards the commercial details of the crime, said they intended—as your Honor will find the notes to say—they intended to reach by this section every possible kind of forgery that could exist in the commercial world. The prosecution think they have done so; and I have scarcely known a case of forgery to be conceived, that did not come within the operation of this section, I will read it:—

Mr. Brady:—What number is that?

The District Attorney:—It is Section 23, of the law against forgery. "Every person who with intent" (as my learned friend, Mr. Brady, correctly stated yesterday—that being the very first thing that the Revisors put to you as Jurors,) "with intent to injure or defraud" (the old common law used the word "defraud," which was rather circumscribed in its meaning, but the revisers following out this intention to comprehend every species, have added the word "injured," which is very comprehensive,)—"with intent to injure or defraud" (and such you will see is the language of the charge in the indictment, following this statute,)—"shall feloniously make, alter, forge, or counterfeit any instrument, or writing, being," (whether it was or not) "or purporting to be, the act of another, by which any pecuniary demand or obligation shall be, or shall purport to be created, increased," (if it were increased before) "discharged from its creation, or diminished from its creation, or by which any right or rights, or property what-

ever shall be, or purport to be transferred, discharged, conveyed, diminished, or in any manner affected, by which false making, or forging, or altering, or counterfeiting any person may be affected, bound, or in any way injured in his person and property;"—the person so charged, upon conviction thereof, shall be deemed guilty of forgery in the third degree. Under that statute this pleading has been framed.

Now, in olden times, before the law of forgery had been molded into a practical shape, by the aid of the commercial lights of the age, and before that light which matured jurisprudence poured upon it during the earlier part of this century,—the offense of forgery was very limited. It will be necessary for me to advert to this, to show you some matters regarding the story I will narrate, of the wrongs that the People of the State of New York complain of against this defendant. At this early period the crime consisted in the counterfeiting of the semblance of something, and hence very many persons escaped, because they did not—in their writing of forged paper, make it correspond with the similitude of that which it was meant to imitate or alter.

You will perceive, Gentlemen, that our Statute has made it perfectly broad, for it includes "every person who, with intent to injure shall feloniously make or forge or counterfeit, &c." It then extends to every possible case; and formerly the whole thing turned upon the physical fact of the injury to defraud. Perhaps I might more correctly say the *pecuniary* effect of the forging. But now, since the rule has been so well established in all the appliances of society to trade, commerce, and manufactures, that a man shall in law be taken to intend the consequences of his own act, that whole refinement of learning has fallen. You prove a man's act, and the law infers his intent from that act, and if you put in evidence the consequences of that act, why then comes the maxim of the law, that every person shall intend the consequences of his act, unless he shall by due proof, equal to that which is brought against him, show that these circumstances are defective, and that he had no intent to defraud or injure. If a man who is your enemy hold a pistol to your head and explodes it, and you are killed or injured, and then he turns round and says to the law officers, "I had no intention to injure or kill that man," it is no answer, he being your enemy, and bearing you malice, and his act having no appearance of accident. It will not do for a man to walk into yonder bank, and present a forged cheque, and, after he has made it, and been paid for it, and, after it has been discovered to be a forgery, to say, "I did not intend to injure either the bank or the man whose name I forged, because I intended to make that money good—because I intended to pay that man back his money." For you will perceive that no man has a right to qualify his own intent, or to defend his intention upon any contingency within his own control. When an act is complete, the natural presumption springing from that act is taken, and not the

hypothetical one he may have upon his mind, though he evidenced it by acts.

Now, the story which that indictment tells in its legal language is something like this, as it will appear by the evidence we shall give:

This defendant, at my right over the bar, last spring and summer, and perhaps some years previously, was a note-broker in Wall street, somewhat well known in business under his own name and on his own account, and with no associate, no partner. It was held out to the world in the name of CHARLES B. HUNTINGTON. He had an office in Wall street, but to you, Gentlemen, who are familiar with all the commercial matters of this metropolis, it is not necessary to say any thing further than that he was a note broker. You understand the meaning of that word without my explaining it. With what he did prior to a certain day, at this time we have nothing to do. He had married into the family of the Barrys; and a young gentleman, a Mr. Barry, who was his brother-in-law, occupied a position in another part of the city from Wall street,—that part of the city where the honest arm of labor falls, where all the appliances of honest industry are seen; and from that place he was taken by Huntington to Wall street to pay him a higher salary, or give him better employment, and he is installed in a little office, paid $15 a week—$60 a month; and he sits in his office prepared to do any thing that his brother-in-law, Huntington, will tell him; in whom, of course, he has great confidence, as he should. A week or so passed by, and nothing was given him to do. Again he goes to see Huntington, and remonstrated, as I think the evidence will tell you, that he must have something to do. Huntington thereupon told him to go to the office, and he would give him something to do; he had not time to speak to him just then, but he would give him some work. Accordingly, Mr. Huntington, in his own handwriting, sends to Mr. Barry a memorandum upon which is endorsed directions, which will be shown in evidence, for the filling up of certain notes,—dates specified, amount, time, maturity to be accomplished, &c., &c.—every thing but the name. But who was to make it?—who was not to make it? Now, that of itself is the most suspicious circumstance in the world. One would have thought at the outset he would have said, "Phelps, Dodge & Co.," for instance, "a large firm who have their millions of credit and responsibility, want a note filled up to sign, and you must do it nicely." Nothing of that kind; nothing but a bare, simple memorandum upon a piece of paper, not signed in this respect by his own name, "Huntington," no address, nothing but the bald matters which are necessary to be put into a note; no note sent, no book of notes sent. Barry was directed to go out into the street, get his notes, and fill them up according to this specification. Among the very notes filled up by Barry at the solicitation of Huntington, upon the day in question, appears the very note which is the basis of this

indictment. We therefore start in the case with the principal part of the note traced directly to the manufacturer, Huntington, or as the indictment says—"willingly acting and assisting, in "making, counterfeiting, forging, &c., the instrument set forth." And Barry gives that very note which is the subject of this indictment into the custody of Huntington. What to do with it Barry knew not. That was a secret in the breast of Huntington. Huntington soon makes his appearance in the office of Mr. William H. Harbeck, well known as a business man in this city, and he goes in and says, "Mr. Harbeck, have you any money to lend to-day?" Mr. Harbeck and Mr. Huntington had had some acquaintance and dealing before. "Yes," says Mr. Harbeck, "I have." Said Huntington, "I want $21,000 upon the check of Hoffman & Leonard with my check annexed, and the collaterals which are here in my hand," giving them to Harbeck. There was the check of Hoffman & Leonard, his own check for $21,000, with the collaterals five or six in number, one of them the note which is the subject of this indictment,—to wit, one made by Barry for $6,500, and which then turned out to be signed, or purported to be signed, by the extensive firm of Phelps, Dodge & Co. Mr. Harbeck has the $21,000. There is the name of Phelps, Dodge & Co. attached to an obligation in which the name of the Minnesota Mining Company appeared, it being very natural that they should deal in matters of that kind. There are the collateral securities of Swanwick & Co., the obligation of Bliss, Briggs & Douglass, also well known in the city, and other obligations which we shall show; altogether, forming if your Honor please, part of the *res gestæ*,—attached to, annexed to, and forming part of the uttering of this note specified in the indictment, and therefore most properly to be put in evidence, and not as my learned friends and the Court will see the subject of any other indictment. Mr. Harbeck takes the check of Huntington for $21,000, and the several collaterals then running, and not yet matured, and upon the faith of the check and collaterals—because it is evident that he would not have advanced it upon the cheque without the collaterals, the check and the collaterals forming the security—gave directions to his cashier or bookkeeper in Huntington's presence to draw a cheque for $21,000, and give it to Huntington, which was done. The cheque was given to Huntington and used by him, because upon the face of that check is Huntington's stamp on the Bank of the Republic, thus exhibiting upon his part the most wide awake and shrewd method of conducting his operations under this sort of moral insanity that seemed to have seized upon him.

He was shrewd enough to put his mark upon this check so that in the event of its being dropped in Wall street it should come back into his possession. This method of doing business stamps him as a man who knows fully what he is about, and the necessity he felt for keeping guard to-day over the lie of yester-

day, and to-morrow keeping guard over the necessary lie of to-day. It would be said that at once the forged papers might have been discovered, but there is in Wall street in this city, as there is in every other place of the kind, a robbing of Peter to pay Paul; while a loan may be got from Mr *A* to-day on the faith of forged collaterals, a loan may be obtained from Mr. *B* to-morrow to replace the first one, and so on until the unfortunate drama of crime is discovered by the authorities, or perhaps continued if the design should be concealed. It is not for me to say how often this immoral drama is perpetrated in this city, or in any other of the great commercial cities of the world; for you will perceive that it is a crime very difficult to guard against. Confidence is the very life and essence of commerce, and the political axiom is undisputed, "perish credit, perish commerce." Why, all our dealings in life are founded in our confidence in our fellow-men. My learned friend (Mr. Brady) spoke yesterday rather as a cynic than as a philosopher when he said, that it was the tendency of mankind to think evil of their neighbors. I deny that. I differ with him, with all respect. The very essence of society is confidence in man, and although we may affect to disparage it now and then, and say: "Oh, it is a wicked world," yet we do by every action in our life, place our confidence in our fellow-man. We must do it; it is the essence of society; and in doing it we are merely obeying every dictate of charity—not to judge others lest we should be judged ourselves. And so Mr. Huntington went on imposing on the confidence of this man. His assurance, his look, the collaterals—these obtained the advance of the money. The notes were handed to the bookkeeper, who remembers them perfectly, as does Mr. Harbeck himself,—they were put into the safe for perfect keeping, and Mr. Huntington went on his way to do as he pleased.

The next thing we have in this little story is the scene where that great commercial detective of the modern age, Mr. Bowyer, appears upon the stage. One morning the rubicund face of Mr. Bowyer looked in on Mr. Huntington. "Mr. Huntington, a word with you if you please." Mr. Huntington, with his ready assurance, and the air and bearing of a gentleman, asks:—"What is it?" "Well, come with me, you are wanted." The *denouement* comes—"Mr. Huntington, you have offered forged paper in pledge to Mr. Harbeck." They go to Mr. Harbeck, and he is apprised of it, and he brought out the collaterals; and Phelps, Dodge & Co., and Bliss, Briggs & Douglass, and all these gentlemen whose names have been so falsely lied about by Mr. Huntington, at once pronounced that these collaterals are forged—not only the one in the indictment, but every one of its fellows. Now there may be such a thing as a note-broker engaged in an extensive business having a piece of forged paper mixed up with other genuine pieces of paper. I have known of such cases. But every one of these collaterals in the possession of Harbeck, coming from Hunt-

ington, and this very note in the indictment made by the order of Huntington, were forgeries and commercial lies. The reputation of Phelps, Dodge, & Co. was attacked by them—"injured," in the very language of the law; and so Bliss, Briggs, & Douglas, and Graydon, Swanwick, & Co., and Mr. Harbeck, were defrauded. Now, it may be thought that it would do very well to say, "Oh, I never intended to defraud you;" but it is a perfect answer to say, "Yes, but you did defraud me; I care not whether you intended to do so or not. The very act that you have begun with and carried on, and which is now concluded, defrauded and injured me at every step." Here, as the theologian sometimes hugs the false to his bosom, and rejects the true because ignorant of it, so Mr. Harbeck has taken these collaterals, kept them, believed they were true, believed in them implicitly, thought he had security for his money, and that money gone. How, and where, it is not for me to inquire, or you, Gentlemen, to ask, because the law only says that it is gone. Huntington has defrauded Harbeck out of $21,000, and the money is gone. Nay, more than that, for the indictment says, "with an intent to injure and defraud Harbeck and divers other persons to the jury unknown," and defraud Phelps, Dodge, & Co. How? Why Phelps, Dodge, & Co. might to-morrow find a difficulty in putting their paper out. A man might come running up to them and say, "Is this note of yours genuine? There is so much false paper about now that it requires us to be cautious about accepting it." This is the injury, and it is not to be met by saying that there was no intent to defraud or injure. Why, they are injured, in the language of the law, and the very conclusion of the act shows that the man intended to injure because he did injure.

And Mr. Huntington being apprised that those securities were forgeries, Mr. Bowyer takes him to the Tombs, and he is locked up. That is the outline of the story. You may pile your book-cases with novels and dramas, but you will never find them as interesting as the transactions that pass before you in this court room. It is a little story, but a comprehensive one. The question whether Mr. Harbeck is able to afford to lose $21,000, or whether Phelps, Dodge & Co.'s credit in this community is so great that they can afford to allow a spendthrift to trifle with their name, has nothing to do with this case. This man has stabbed at the commercial reputation of men whom you and I have an interest in. He has inflicted a blow upon the people of New York. He has committed a crime against the statute book, and whether Mr. Harbeck was a fool in taking those notes or not —whether any man would have been deceived by the cool assurance of this man or not, by these forged collaterals, and this easy, business air—is not the question. But a crime has been committed. There has been an uttering. "Oh," said some lawyers, many years ago, "it is not an uttering of paper, the mere deposit of it and not passing it, that makes the crime." But that

point was met, and the supreme voice of the law came in and said, that every pledging of paper on the faith of which money was falsely obtained was a forgery.

Now, you will perceive how chronologically it will proceed. We shall put Mr. Barry upon the stand, and expose him to the cross-examination of my friends upon the other side. We will show, as we have a right to do, that he was the agent of Huntington in this particular transaction at the time it was perpetreted, and that he made this note, which is the subject of indictment, down to the forging of the name, because you will perceive that Mr. Huntington is positively guilty of forging the body of that note, although he may have got some other Barry, or other person whom we know not of, to write the name of Phelps, Dodge & Co. It is a note which he himself has made, and with the handwriting of which he was familiar when he gave it to Harbeck. We will trace through Barry this note into the hands of Huntington down to the signature. We will trace it coupled with Huntington's own check, with Harbeck's returned check, with Huntington's stamp upon it, the bookkeeper identifying the notes, and Mr. Phelps, a member of the firm of Phelps, Dodge & Co., testifying that it is a forgery. Each one of the gentlemen whose commercial reputation has been injured by these several collateral transactions will come upon the stand and say that they are forgeries. That will be our case. Then will come in the defence, and you of course will not make up your minds upon this matter as it proceeds. This, of course, is all subject to explanation; but put it to yourselves, as this trial proceeds, what possible explanation can be given. Put to yourselves this asseveration, that the explanation of such an astounding transaction must be very great in its origin, in its forms, and in its conclusions. It must overthrow the original presumption of the law, that this piece of forged paper was a forgery—that he intended to utter it as such, and also the increasing presumption of the law that each collateral, one after the other, was forged.

I am but doing my duty as you are to do yours. I began by saying this trial was one of public interest, and I will speak of it in conclusion as one rightly of public interest in every aspect in which you may view it; as citizens, or as jurors of this great commercial metropolis. Whilst we cannot change the current of human nature, while legislators in vain may endeavor to coerce human nature, we may at last restrain and correct vice by maintaining the character of this great metropolis, and keeping it in that proper check which is the aim of all law.

And although strangers may sneer at this city, which we may proudly call a metropolis, and designate it the modern Sodom and Gomorrah, if it is ever to be saved I believe it will be redeemed because there may be found in it twelve righteous men, and they will be those who sit from day to day in the jury box of the criminal courts.

EVIDENCE FOR THE PROSECUTION.

The District Attorney resumed his seat, and called, as a witness for the prosecution,

Henry H. Barry, who, being sworn and examined by Mr. Hall, (the District Attorney) testified as follows:

Q. How old are you? *A.* Twenty-three years.

Q. You are a brother-in-law of Mr. Huntington, the prisoner, I believe?

A. Yes, Sir.

Q. What was your business in May, 1856? *A.* Book-keeper.

Q. For whom? *A.* James Nash & Co.

Q. Where was their place of business?

A. At the foot of Eighteenth street, East River.

Q. When did you leave that employment?

A. I think it was in the early part of May, 1856.

Q. Did you leave it at the request of anybody? *A.* Yes.

Q. Who requested you to leave it?

A. I left it at the request of Mr. Huntington, and the rest of my friends.

Q. What was your next employment? *A.* Note-broker.

Q. That was Mr. Huntington's business at the time—in May and last summer? *A.* Yes; I think it was.

Q. Where did you have an office?

A. At the Corner of Hanover and Wall streets.

Q. Did you take that office at the suggestion of any one; and if so, of whom? *A.* I took it at my own.

Q. Who employed you there? *A.* No one.

Q. Did you have a sign out? *A.* Yes.

Q. Did Mr. Huntington at this time pay you any compensation?

A. Yes, Sir, he gave me $15 a week.

Q. And what were you to do; and what did you do, in consideration of that payment to you by Mr. Huntington?

A. Nothing for him. He gave it to me for the purpose of supporting myself till I could get more business to do.

Q. Were you to render him any particular service? *A.* No.

Q. Did he ever after that, give you any employment—any thing to do for him?

A. He gave me some notes to fill out.

Q. Do you remember about the date when he first gave you notes to fill out? *A.* I cannot recollect.

Q. You say you left the employment of Nash about the middle of May.

A. About the middle of May.

Q. And you opened an office immediately in Wall street? *A.* Yes.

Q. How long after that (and perhaps that may fix it in your memory) did this giving of notes by Huntington for you to fill up, take place?

A. I think it was in July.

Q. Are you acquainted with the handwriting of Huntington—you ever seen him write? *A.* Yes, Sir.

Q. Look at this piece of paper, and see if you know whose handwriting it is?

[The paper produced is marked A, and is as follows:

July 1st, three months	6,500.
July 1st, three months	6,500.
July 1st, four months	6,500.
July 1st, four months	6,500.

Value received of Minnesota Mining Co. We promise to pay to our own order.

A. It resembles Mr. Huntington's.

Q. Have you ever seen that before?

The Court: Does he speak of the whole paper?

The District Attorney: Yes.

The Witness: I have no particular memory of that piece of paper.

Q. Did you at any time fill out, at Mr. Huntington's request, notes of that description of paper?

A. I filled out a great many notes. I filled out notes for him. I have no doubt I filled them out. To the best of my belief I did. I cannot swear to it.

Q. I will show you the note set up in the indictment (marked B. and is partly printed and partly written.) Do you know the handwriting of the body of that note? *A.* Yes, Sir, It looks like my handwriting.

[It is as follows, the written parts being in italics.]

$6,500 New York, *July* 1, 1856.

Four Months after date *we* promise to pay to the order of *ourselves sixty-five hundred* Dollars, at *The Bank of Commerce.* Value received *of Minnesota Mining Co.*

PHELPS, DODGE & CO.

No.—— Due *Nov.* 4th.

Endorsed "*PHELPS, DODGE & CO.*"

Q. Do you know anything of the handwriting of the body or the signature of those (handing witness 3 notes and 1 draft, marked C, D, E and F.)

A. I do not think I do, Sir.

[These notes and draft are as follows: They are partly written and partly printed—the written parties being in italics.]

[C]

$5,500 New York, *March* 12, 1856.

Nine Months after date, *I* promise to pay to the order of *myself, Fifty-five hundred Dollars.* Value received.

No.—— Due *Dec.* 15. *PETER K. KNAPP.*

Endorsed "*PETER K. KNAPP.*"

[D]

$5,569 44 *New York, July* 2*d.* 1856.

Four months after date *we* promise to pay to the order of *ourselves, Fifty-five hundred and sixty-nine* 44-100 Dollars. Value received.

BLISS, BRIGGS & DOUGLASS.

No.—— Due *Nov.* 5.

Endorsed "*BLISS, BRIGGS & DOUGLASS.*"

[E]

Dolls. 2,331 41. New York, *June* 13, 1856.

Nine months after date, *we* promise to pay to the order of *Thomas N. Dale & Co., Twenty-three hundred and thirty-one* 41-100 Dollars, Value received.

THOMAS N. DALE & CO.

No.—— Due *March* 13–16.

Endorsed "*THOMAS N. DALE & CO.*"

[F]

$7,500. New York, *July* 1st, 1856.

Four months after date, pay to the order of *myself, seventy-five hundred* Dollars, Value received and charge the same to account of

To *Graydon, Swanwick & Co.* *J. W. KINGSLEY.*

Due Nov. 4.

[Written across the face, "*GRAYDON, SWANWICK & CO.*"]

Endorsed "*J. W. KINGSLEY.*"

Q. Have you any recollection of ever writing that note?

A. I cannot say, for it is so long since I filled it out.

Q. You say that you think the body of that note is in your handwriting. How about the signature? *A.* That is not in my handwriting.

Q. That you know nothing about? *A.* I know nothing about it.

Q. What did you do with this note (marked B) and the others—whom did you give them to, if anybody?

A. Sometimes I left them at the office—left them on the desk at the office. I believe one or two I gave to Mr. Huntington. I do not remember which notes I gave to him.

Q. Repeat that answer again?

A. I left some of the notes on the desk while he was absent, and I think I gave him one or two. I think I gave them to him twice.

Q. I see upon this note, the initials of your name "*H. H. B.*" (Note marked B.) Do you know why you put those initials there?

A. I did so at the request of Mr. Bowyer, the police officer at the City Hall.

Q. When did you put your initials on it?

A. I think after my statement before the magistrate.

Q For what purpose did you put these letters on it?

.. He told me to do so, so as to recognize it again.

Q. How many notes in all do you remember filling up for Mr. Huntington, at his request, taking to the office, and leaving or giving to him?

A. I do not remember the number.

Q. About how many? Can you give us an idea?

A. I suppose ten or fifteen—somewhere about that—ten I suppose.

Q. In whose handwriting is *that* piece of paper? (handing witness a small piece of paper Marked G)?

A. I suppose the same as the others.

Mr. Brady: That is your handwriting?

A. No, the same handwriting as the others.

Q. In whose handwriting is *that?* (paper marked H).

A. The same as the others.

Q. Mr. Huntington's? *A.* It resembles his handwriting.

Q. Have you ever seen that before? (paper marked J.)

A. I suppose I have. I cannot remember any of them.

Q, Look at this one (the last.) In whose handwriting is that?

A. The same as the others.

Q. Have you ever seen that before? (paper marked J.)

A. I have no recollection of seeing that before.

Q. In whose handwriting is that, to the best of your knowledge and belief?

A. It does not look so much like his handwriting as the others.

Q. *Here* are two envelopes addressed to you. Have you ever had those before? *A.* Yes. (Envelopes marked R. & L.)

Q. In whose handwriting is the superscription of each?

A. I suppose it must be Mr. Huntington's. I do not think *that* (marked L) resembles his much. *That* (marked K) resembles his handwriting.

[These slips of paper and envelopes are as follows:]

[G]

Get 4 notes and fill them up nicely, C. B. H.

[H]

Make me 6 notes of 5000 each payable to the order of the drawers, dated July 1. 2. 3. 4. 5. 6, at 4 mos., payable at the Bank of Commerce. Get a nicer note than the last.

[I]

In pencil.

Fill me up four notes of $5, 000 each. Dated July 1-2-5-7 at four months payable to our own order at Mercantile Bank. C. B. H.

[J]

In pencil.

April 1st, 4 mo.	6250, 00
" " 5 mo.	6250, 00
" " 6 mo.	6250, 00
" " 6 mo.	6250, 00

Order of ourselves. Value rec'd of Minnesota Mining Co.

[K]

Envelope.

H. H. Barry Esq.

[L]

Envelope.

H. H. Barry Esq.

Q. Did you ever fill up such kind of notes for any one else, while you were in business there? *A.* No, Sir. Not in Wall street.

Q. Where did you get those notes—the printed blanks?

A. At the stationer's.

Q. You got them yourself, did you? *A.* Yes, Sir.

Q. At whose request did you get those notes?

A. At the request of Mr. Huntington.

Q. About how long after you went to Wall street was it that you first began to make out the body of the notes at Mr. Huntington's request?

A. I should think six weeks, or two months.

Q. And how long did that service continue?

A. I do not remember the length of time.

Q. About how long? Cannot you remember it? Was it a week, a fortnight, or a month?

A. I do not recollect the time. I do not recollect the stated time. I cannot tell within three weeks.

Q. When did you stop having the office in Wall street?

A. The first of August I think it was.

Q. Why did you give up your office?

A. Because I could not find business.

Q. Where did you go to then—after the first of August?

A. I went as check clerk to the "Artisans' Bank."

Q. When did this $15 a week from Huntington cease?

A. When I had my month's payment from the Bank.

Q. Did Mr. Huntington ever give you any moneys besides that for allowance?

A. If I asked him for it he gave it to me.

Q. Did you ask for it? *A.* Yes, Sir, I did ask for it.

Q. How much in all have you received from Huntington since you left Nash's employment? *A.* I do not know.

Q. About how much? Do you not remember?

A. I suppose about $300, and over. Three or four hundred dollars. It might have been $400.

Mr. Brady said that he did not wish the silence that he had maintained to several of the questions put to this witness to be used as an argument against him in regard to the legality of such proof. He (Mr. B.) was of opinion that he might have successfully objected to many of the questions propounded by the other side, but having in view the interest of his client, at the present time he had abstained from interrupting the examination. He would, however, should occasion arise, hereafter protest against the illegality of many portions of the examination.

Cross examined by Mr. Brady.

Q. When did Mr. Huntington marry your sister?

A. I think he married her in May, 1849.

Q. And at that time you were residing where?

A. New London, Connecticut.

Q. And you came to the city in what year?

A. I think in the year 1851.

Q. As I understand you, Mr. Huntington gave you $15 a week to support yourself, until you got some employment? *A.* Yes.

Q. But that was not the first time that he had assisted you?

A. No, Sir.

Q. He had assisted you before that?—during all the time you had been in the city?

A. Yes, Sir; he gave me money when I asked for it.

Q. When you were with James Nash & Co. what compensation did you receive? *A.* $400 a year.

Q. How long did you live with James Nash & Co.? *A.* Two years.

Q. Why did you leave James Nash & Co.?

A. For the purpose of going down to Wall street, and doing business for myself.

Q. Was the salary too small? *A.* Yes.

Q. Did you think so, or did somebody else tell you so?

A. I thought so.

Q. Then your leaving and going to Wall street was an act of your own?

A. Yes.

Q. To better your condition? *A.* Yes.

Q. You hired this office upon your own account? *A.* Yes.

Q. Had Mr. Huntington any thing to do with that? *A.* No, Sir.

Q. And when you did hire it, for what time did you hire it?

A. For a year.

Q. For a year from the first of May? *A.* I hired it by the year.

Q. Did you hire it upon the first of May, or on the 10th of May?

A. I think I hired it about the 10th of May.

Q. Mr. Huntington was in no way connected with that business?

A. No.

Q. You were arrested, were you not? *A.* Yes.

Q. By Mr. Bowyer? *A.* Yes, Sir.

Q. You were arrested by Mr. Bowyer, perhaps, on the same day that you were examined? *A.* No, Sir.

Q. What day then?

A. I think the third day after. I was examined the third day after my arrest.

Q. You were examined, as appears by this paper handed to me by the District Attorney, on the 16th of October. How many days before the 16th were you arrested?

A. I think three days. I think I was arrested on the 13th. I was arrested on Monday morning.

Q. In the day time or night? *A.* In the day time.

Q. At what place? *A.* In the Artisan's Bank.

Q. Had you seen Huntington that day? *A.* Yes.

Q. And the day before? *A.* Yes.

Q. And the day before that? *A.* Yes.

Q. Did you see him every day?

A. Yes; I saw him every day excepting Sunday.

Q. Do you mean you saw him in the street, the Bank, or where else?

A. I saw him at his office, and in prison.

Q. When did you first hear of his arrest?

A. I was there when he was arrested.

Q. What day was that? *A.* I do not remember the day.

Q. How long was it before you were arrested?

A. Three or four days I think after his arrest.

Q. You had seen him every day in the meantime? Had you any conversation with him at that period upon the subject of his arrest—as to these forgeries. I do not ask what it was, but only if you had any conversation with him. *A.* I think I did.

Q. He was at large—at liberty, was he not? *A.* No, Sir.

Q. Where was he? *A.* In the City Prison.

Q. From the day of his arrest?

A, Do you mean the first, or the second arrest?

Q. The first. *A.* I met him in his office after the first arrest.

Q. Where was the first arrest? *A.* I do not remember.

Q. He was out on bail? *A.* Yes.

Q. Who was his bail? *A.* Mr. Belden and Mr. Harbeck.

Q. How long was he at large on bail? *A.* Until the next afternoon.

Q. I will ask you if this is your signature to this examination (handing examination of witness taken before the Magistrate.) *A.* Yes, Sir.

[The deposition here referred to is as follows:

City and County of New York, ss.—Henry H. Barry, being duly examined before the undersigned, according to law, on the annexed charge, and being informed that he was at liberty to answer or not, all or any of the questions put to him, states as follows, viz.:—

Q. What is your name? *A.* Henry H. Barry.

Q. How old are you? *A.* 23 years.

Q. Where were you born? *A.* In East Haddam, Conn.

Q. Where do you live? *A.* At the Barker House, Brooklyn.

Q. What is your occupation? *A.* Check clerk in the Artisans' Bank.

Q. Have you anything to say, and if so, what, relative to the charge here preferred against you? *A.* I deny being guilty of the charge preferred against me, but in relation to the matter I make the following statement:—I am a brother-in-law of Charles B. Huntington. He married my sister. In May, 1856, I was a clerk with James Nash & Co., lumber dealers, at the foot of 18th street, East River. I left their employment on or about the 10th of May, 1856, at the request of Mr. Huntington, who said he thought I could do better in Wall street. Huntington was at that time a note broker in Wall street, No. 52. I then left, and went down into Wall street, and opened an office at the corner of Hanover and Wall streets. Mr. Huntington allowed me $15 per week to live on, for the reason that I was not doing any thing, and it was thought I could not make any thing at first. My business was to be that of a note-broker, selling notes. After I had been into Wall street a week or two, I went into Huntington's office and told him that I was tired of sitting in the office doing nothing, and asked him if he could not give me something to do. He replied by telling me to return to my office and wait, and he would send me a communication, as he was then busy. Shortly afterwards, either the same day or the one following, he sent me a letter. There are several notes or communications now here which were received by me from him, but I cannot tell which came first, as they have no date. I think in the case of the first one he brought it to me himself, and told me to go and buy some blank forms of notes; I did so, and on my return filled up the notes as he told me. I don't remember how many. From time to time I received communications from him to fill up notes. Those which are now here and exhibited to me are those which I received, and I filled up the notes referred to in those communications. To the best of my belief, all of these communications are in the handwriting of Mr. Huntington. They are now here, marked on the back, Nos. 1, 2, 3, 4, 5, 6 and 7. After I filled up the notes as directed, I delivered them to Mr. Huntington. He looked over them, and said all was right, and retained them in his possession. I identify six promissory notes here, having my initials on the back, as being filled up by me in my own handwriting. These notes I delivered to Mr. Huntington. I did not know the purpose for which they were to be used, but supposed them to be for a legitimate purpose. My first suspicions were aroused after Huntington's second arrest, by reading the accounts in the newspapers of the large amount of forged paper. To satisfy myself whether I had been engaged in filling up any of the forged paper or not, I went to Huntington's office to obtain a bundle of letters which I had left there, amongst which were the memorandums above mentioned. All my letters and papers were taken to Huntington's office when I closed my office. I did not find the papers there then, but the papers now here are those which I was in search of. This is all that I have done, and all that I know of the matter.

HENRY H. BARRY.

Sworn to before me, October 16, 1856.
B. W. OSBORNE, *Police Justice.*]

Q. Well, Sir, you took that office, and you had been there six weeks, and I suppose making no money, or very little? *A.* Yes.

Q. Had you made any? *A.* Yes.

Q. You were living upon what Huntington gave you? *A.* Yes.

Q. Did he ask you during that six weeks to render him any kind of service whatever? *A.* None at all.

Q. Did he employ you to do any thing until you went and made some communication to him about your business? *A.* No.

Q. What did you tell him?

A. I told him I wished he would get me something to do—some business.

Q. What did he say to that? *A.* He said he would—he would try to.

Q. And then he sent you these orders, if these be the papers?

A. Yes, Sir, I think he sent them. I received them. I supposed he sent them.

Q. Now, Sir, when he sent you these orders, and came to you to fill up notes, did he give you any other instructions about the notes, or the business, except what is contained in the orders?

A. Not to my knowledge.

Q. Did he give you any instructions in this way, or to this effect? any instructions or caution not to let anybody see those orders? *A.* No.

Q. Or to observe any kind of secrecy whatever in reference to what you were doing for him? *A.* No.

Q. If there was any thing of that kind, tell it to the Jury?

A. No. He never asked me to do it secretly.

Q. Or intimated it in any way directly or indirectly?

A. He never intimated it to me.

Q. You are quite certain as to that? *A.* Quite.

Q. Did he ever ask you to deliver back to him any of those orders?

A. No, Sir.

Q. Where were they at the time of his first arrest? *A.* At his office.

Q. When did they go to his office? *A.* When I gave up my office.

Q. I have forgotten the date of that.

A. I think it was 1st August, 1856.

It was here agreed between the Counsel that the date of Huntington's first arrest was the 9th of October.

Q. On the first of August you gave up your office? *A.* Yes, Sir.

Q. On giving up your office what did you do with those papers?

A. I put them with the rest of my letters, tied them up and took them to Mr. Huntington's office.

Q. A bundle of papers containing these letters, and your orders?

A. Yes.

Q. In what part of his office?

A. I gave them to his clerk, and he put them in a little drawer.

Q. What is his name? *A.* Thomas.

Q. What age was he? *A.* 15 or 16 years of age.

Q. Was the drawer locked or open? *A.* Open.

Q. When did you next see them?

A. In Mr. Bowyer's hand at the City Hall.

Q. Did you not go to look for them? *A.* Yes.

Q. When was that? *A.* On the day of my arrest.

Q. Where did you go to look for them?

A. I went first to the house of Mr. Halsey, the evening previous, and he said he would give them to me in the morning, so I then went to the office of Harbeck and Belden, and they gave me the keys of the office.

Q. Whose office? *A.* Huntington's office.

Q. Did you go to Huntington's office? *A.* Yes.

Q. Did you make any search there for these papers? *A.* I did.

Q. Did you find them? *A.* No, Sir.

Q. What does this mean in your examination: "To satisfy myself whether I had been engaged in making up any of these forged papers, I went to Huntington's office to obtain the bundle of papers I left there, among which was the memorandum above mentioned. I did not find the papers there"? *A.* I did not find them there *then.*

Q. You did not find any there then?

A. No. I had them all in one bundle, which Mr. Halsey, the assignee, took possession of at Huntington's office after the arrest.

Q. These papers have no dates. Can you tell in any way which one of these orders for notes was received by you first? *A.* No, Sir.

Q. Is there any way by which you can tell? *A.* No, Sir.

Q. Can you tell me which of those notes you filled up first?

A. No, Sir.

Q. Have you no means of fixing that? *A.* No, Sir.

Q. This one is dated July 1st, 1856. Can you tell me at what date that was filled up?

A. I suppose at the time that I filled it up. I suppose on July 1st I filled it up.

Q. Who obtained you that situation in the Artisans' Bank?

A. Mr. Huntington.

Q. Now, Sir, between the 1st of August, 1856, and the time of your procuring the situation in the Artisans' Bank, were you engaged in any business whatever? *A.* None at all.

Q. When you took these orders to the office of Mr. Huntington, was it entirely your own motion, or had he in any way intimated to you a request, or desire, or wish to have those papers back?

A. I do not remember his ever saying so.

Q. Did you leave any particular instructions as to how they were to be taken care of?

A. I told him to keep them two or three days, and I would then take them home.

Q. Why did you not? *A.* I forgot it.

Q. Was there any other reason? *A.* No other reason.

The Court:—He means he requested the boy?

The Witness:—Yes, the boy Thomas.

Q. Are you still in the Artisans' Bank?

A. No; they obliged me to resign.

Q. On account of this affair? *A.* Yes, Sir.

Q. Now, as to that bundle in which these orders were that were left with Thomas. Did it contain any papers important to you personally, and belonging to you alone? *A.* I think there were some receipted bills.

Q. Relating exclusively to your personal concerns? *A.* Yes.

Q. Now, Sir, a little more particularly about Huntington's arrest on the 9th day of October. When did you first learn that Huntington had been reed on the 9th of October?

A. The book-keeper of the Artisan's Bank informed me.

Q. About what time? *A.* About half-past nine next morning.

Q. When did you first see Huntington after that?

A. About eleven o'clock the same morning.

Q. Where? *A.* At his office.

Q. At his usual place of business? *A.* Yes, Sir.

Q. Was he alone? *A.* No, Sir.

Q. Who was with him? *A.* Two clerks, I think.

Q. Thomas? *A.* Yes.

Q. And who was the other? *A.* Mr. Barker.

Q. What is his first name? *A.* I do not know his first name.

Q. Mr. Bowyer was not there? *A.* No.

Q. Nor Harbeck, nor Belden? *A.* No.

Q. What was he (Huntington) engaged in at that time?

A. He was the same as usual.

Q. How long did you remain with him?

A. I remained there until his second arrest.

Q. I am speaking now of the ninth of October.

A. I am speaking of the tenth.

Q. How long in all did you remain with him?

A. I should think two or three hours.

Q. Who arrested him the second time? *A.* Mr. Bowyer.

A. Did any one come with Mr. Bowyer? *A.* I do not remember.

Q. Now, during that three hours, or whatever time it may have been, that you were in that office with Huntington on the second arrest, did you transact any business with reference to papers? *A.* None at all.

Q. Did you touch any papers? *A.* No, Sir.

Q. Examine any papers? *A.* No, Sir.

Q. Destroy any papers? *A.* No, Sir.

Q. Conceal any papers? *A.* No, Sir.

Q. Whether your papers, including these orders, were then in that drawer or not, you have no means of certainly telling? *A.* No.

Q. And did not look? *A.* Did not look.

Q. When you were arrested had you any counsel? *A.* No Sir.

Q. Did you not seek any? *A.* Yes, I asked for counsel.

Q. Of whom?

A. I asked Mr. Bowyer if he would send for a lawyer, but he told me I did not want any.

Q. They did not intend to hold you, but merely took your examination and discharged you? *A.* Yes.

Q. Had you any communication with any counsel of Huntington's about the charges against you in any way, by writing or otherwise—directly or indirectly? *A.* No.

Q. Have you ever had, in any way?

A. No. (It was agreed between the counsel that all notes identified by this witness upon his former examination and marked, were to be used on this trial).

Re-examined by Mr. Noyes.

Q. Was anybody else present when you gave Thomas these papers—your private bundle of papers?

A. Yes, Sir, Mr. Huntington was present, I think, and Mr. Barker I believe, was present when I gave them to his clerk Thomas.

Q. Did you say any thing to Huntington about it?

A. No, Sir, I think not.

Q. Or to Barker in his presence?

A. I spoke to Thomas, so that Huntington could hear me.

Q. Thomas is not Barker? *A.* No, Sir.

Q. You spoke to Thomas so loud that Mr. Huntington could hear you?

A. Yes—in my usual tone of voice.

Q. Repeat what you said at that time.

A. I told him to take care of those papers until I called for them—that I would call in two or three days, and take them away when I was going home.

Q. Was that all? *A.* That was all.

Q. What was Huntington doing then? *A.* In the office?

A. Yes, when you made this remark to Thomas.

A. I do not remember—writing I presume.

Q. How large was the packet of papers you gave to Thomas?

A. Four or five inches square.

Q. Did you notice where he put them? *A.* Yes.

Q. In whose desk? *A.* In his own desk.

Q. How far was that from Huntington's desk?

A. Ten or fifteen feet; ten I should think.

Q. Upon the same side, or the opposite side of the office?

A. Upon the east side of the office. Mr. Huntington's was, I think, upon the west side.

Q. It was upon the opposite side of the office from which Huntington's desk was? *A.* Yes.

The Court: Whose desk was opposite Huntington's?

Mr. Noyes: The boy Thomas's.

Q. Did you ever speak to Thomas about the papers afterwards?

A. No, Sir.

Q. Or to Huntington? *A.* No, Sir, it had escaped my memory.

Q. And during the time they remained there, you never wanted them?

A. No, Sir.

William E. Dodge called and sworn. Examined by *Mr. Noyes.*

Q. How long have you been a member of the firm of Phelps, Dodge and Co.? *A.* Twenty-two years.

Q. That firm then has been in existence during that time? *A.* Yes.

Q. Will you state of whom the firm consisted in June and July 1856?

A. Anson G. Phelps, William E. Dodge, Daniel James, James Stokes, William E. Dodge Jun., and D. W. James.

Q. Will you state where those members of the firm resided?

A. All resided here excepting Mr. James, who resided at Liverpool in England.

Q. Are you familiar, Sir, with the handwriting of all the members of the firm? *A.* Yes, Sir.

Q. From having seen them write? *A.* Yes, Sir.

Q. Look at *that* note (the one set forth in the indictment and marked B) and say whether the signature is in the handwriting of any member of the firm? *A.* No, Sir.

Q. Will you state, Sir, whether the signature is an imitation of the handwriting of any member of your firm? *A.* Yes.

Q. Which one? *A.* Mr. Stokes.

Q. Is it successful or otherwise? *A.* No, it is rather poor.

Q. Has your firm any transactions with the Minnesota Mining Co.?

A. Yes.

Q. What relation did you hold with them?

A. We purchased copper from them very largely, and manufactured it.

Q. Do you know whether the firm has ever given any notes on account of copper purchased from that Company? *A.* Yes, Sir, a large number.

Q. State whether the notes which you have given contain any thing special in regard to the Company?

A. I think they have always been drawn to the order of the Minnesota Mining Co. Sometimes when drawn otherwise, it is stated—"Copper purchased from the Minnesota Mining Company."

Q. They were all for value received? *A.* Yes.

Q. Was the signature to this note ever authorized by yourself, or by any member of the firm to your knowledge? *A.* No, Sir.

Q. Was it given, or made, to your knowledge, in any transaction with your firm? *A.* Never.

Q. When did you first become aware of its existence? (handing note to witness, who examined it.)

A. I think it was on either the 10th or 11th of October. My initials are upon the back of it.

Q. You first heard of it when?

A. At the examination of Huntington.

Q. Is there any other firm of Phelps, Dodge & Co., to your knowledge?

A. I never heard of any.

Q. Did you know the prisoner at the bar before his arrest?

A. I saw him the day before his arrest, the first time I ever saw him to my knowledge.

Q. Has your firm ever had any transactions with him? *A.* Never.

Q. Ever given him notes to dispose of, as a broker or otherwise?

A. Never.

Q. You have never given him any note personally of your firm?

A. Never.

Q. You never saw him at all, I understand you, until the day of his arrest? *A.* Not until then, at Mr. Belden's office.

Q. And you do not know that the firm ever had any transactions with him of any character? *A.* I do not know that they ever had.

Cross-examined by Mr Brady.

Q. Look at the endorsement upon that note (handing him note marked B). *A.* Yes, Sir, what of that?

Q. What do you say about it? Is it a forgery?

A. I say it is a forgery, Sir.

Q. Was that upon the note when you first saw it? *A.* Yes, Sir.

Q. Is that an imitation of any one's handwriting?

A. Yes, Sir, the same as the other. It is not quite as well done.

Q. In either of those signatures, do you observe anything that would deceive a person in the least acquainted with Stokes' handwriting?

A. The word "Phelps," is written very similar to Mr. Stokes' style.—The word "Dodge" is not written so large or so full as he writes it, but the general character is like Mr. Stokes' handwriting.

Q. A person acquainted with the mode in which Mr. Stokes wrote the name of that firm would, in your judgment, be likely to be deceived?

A. That would depend upon how much acquaintance he had with it. If presented to any person in our office, they would say at once that it was a forgery.

Q. Did your concern at any time use any such blank as *that?* (handing note marked B)

A. No, Sir, allow me to see it again. (Witness further examining it.) Our blanks are very similar, excepting that our name is printed on the end of the note in our own.

Q. There is no name upon that? *A.* No.

Q. You have not now in your possession one of your notes? *A.* I have not.

Q. Was it the same color as yours?

A. I should think it was. I think our notes are of rather a deeper blue tinge.

Q. When did your transactions with this Mining Company begin?

A. I cannot tell exactly. I should think we have purchased of them for the last two or three years.

Q. Were the notes in your business, and particularly if there is any distinction with the Mining Company's, filled up by any particular clerk in your office?

A. We have two clerks who alternately do it, as it may bemost convenient.

Q. Are those gentlemen still in your employ? *A.* They are.

Q. And performed that duty during the whole of the year 1856?

A. Yes. There are occasionally notes issued, and filled up by the firm when more convenient, but as a general thing, the book-keeper filled them up.

Q. Does the body of *that* note in any degree or respect resemble the handwriting of either of those clerks, or any member of the firm?

A. It is not quite as well written as our book-keeper writes. I do not think it does resemble it very much.

Q. How long has Mr. Stokes been a member of the firm?

A. I think about fifteen years, Sir. Either ten or fifteen; I really forget which.

Q. And during all that time he has resides in this city, has he not, Sir?

A. Yes, Sir, except in the summer, and then he resides in the country

Q. Do you know Mr. Harbeck?

A. I have no personal acquaintance with him. I know him by reputation and when I see him.

Q. Does Mr. Stokes know him? *A.* I cannot tell you, Sir.

Q. It was asserted by the District Attorney, in opening this case, that your firm might have been injured in consequence of your having a large quantity of papers out.

A. We almost always do a large business.

Q. Is your paper in Wall street, occasionally?

A. Yes, I presume it is.

Q. Was there any particular place in Wall street, or any particular dealer, in whose hands there was usually any large amount of your paper?

A. I do not know, Sir.

Q. Say G. S. Robbins & Co.?

A. I think it likely there was more there than anywhere else, for Robbins is the largest bill-broker's in the city.

Q. That, I believe, is the place where Mr. Robbins has upon hand frequently a large amount of paper, and persons go there and look at it?

A. Yes, Sir.

Q. When you first saw Mr. Huntington you say he was at Mr. Belden's office—at which Mr. Belden's office?

A. I do not know that I knew his first name. He sits here in court. It is *that* Mr. Belden? (pointing to Charles Belden).

Q. Where was that, Sir? *A.* It was in Wall street.

Q. How near to Huntington's office?

A. I should say six or eight doors below.

Q. Mr. Harbeck's office was upon the same floor with Belden's?

A. Yes.

Q. Did that form part of one suite of offices? *A.* Yes, Sir.

Q. Did you go there alone? *A.* Yes.

Q. What time of day was it?

A. I should think about half-past three o'clock on the 8th day of October.

Q. Why did you go there?

A. On returning from Wall street my cashier stated to me, that a note had been sent up there for payment from Mr. Belden's office, which was a forgery.

Q. Did the note fall due that day?

A. I think it fell due several days before. It was past due when it was sent up. It was on that note for $6,500 that he was first arrested.

[The note here referred to is as follows, the written portions being in *italics*.

$6,500, New York, *July* 1, 1856.

Three months after date *we* promise to pay to the order of *ourselves, sixty five-hundred* dollars, at *the Bank of Commerce*, value received *of Minnesota Mining Co.*

No. —— Due *Oct.* 1—4. *PHELPS, DODGE & CO.*

(Endorsed) *Phelps, Dodge & Co.*]

Q. When you went to Mr. Belden's in consequence of being told that a note had been sent to your office, from Mr. Belden's for $6,500, which was a forgery, you looked at the note. Did you look at any other note?

A. Yes, Sir. I cannot identify the other note.

Q. But you looked at another note?

A. I did, Sir. It was for about the same amount.

Q. Was that a note purporting to be made by your firm?

A. Yes, Sir.

Q. Had you a conversation with Mr. Belden about that matter?

A. Yes, Sir.

Q. Was Mr. Huntington present when you had that conversation with Belden?

A. Not when it commenced. Before we got through he was there.

Q. Did he come there casually, of his own accord, or was he sent for?

A. I suppose he was sent for.

Q. How far from Mr. Harbeck's office was his?

A. I just mentioned, I thought six or eight doors above.

Q. When Huntington came there, did he and Mr. Belden have any conversation privately between themselves, which you did not hear?

A. Yes, Sir.

Q. Did you go from the place, leaving Mr. Huntington and Mr. Belden there, or did either leave before you did?

A. I left them there. *Q.* You did not see Mr. Harbeck there?

A. I do not think I did, Sir, then.

Q. Now, Sir, you looked at two notes, as I understood it.

A. Yes, Sir. I marked all I gave affidavits to, at the Tombs.

Q. In whose possession were the two notes you saw that day?

A. Mr. Belden's. This note that I held in my hand a moment ago, due October 1—4, was the one handed to me by Mr. Belden at the time,—not the one in the indictment on trial.

Q. Do you identify the note in the indictment?

A. I identify that as one presented at the Tombs, when Mr. Huntington was examined; there I saw it, and put my name on the back of it.

Q. Those two notes you saw in the possession of Belden;—in whose possession were they when you left Huntington and Belden together?

A. Mr. Belden had them, Sir.

Q Did you see those two notes the next day? *A.* I did, Sir.

Q. In whose possession were they then?

A. In the possession of Mr. Huntington, and then in the possession of Mr. Belden—first in the possession of Mr. Huntington.

Q. At what place? *A.* At Mr. Belden's office.

Q. Huntington had those two marked notes in his hat?

A. He had them in his hat, Sir,

Q. Was his hat on his head, or on the table?

A. The facts were these: on asking Mr. Belden for the notes, and turning to the desk, I saw Mr. Belden step from me to Mr. Huntington, and saw Mr. Huntington turn round, take off his hat, take out those two notes, and hand them to Mr. Belden, and Mr. Belden handed them to me.

Q. You made copies of them at the time? *A.* I did, Sir.

Q. And after you had made copies of them, to whom did you return them? *A.* To Mr. Belden.

Q. In the presence of Huntington? *A.* Yes, Sir.

Q. While you were making copies of those two notes, was Huntington engaged with Belden in conversation?

A. They were both standing close together behind the iron railing.

Q. Had you seen Mr. Bowyer before this? *A.* I had, Sir, on that day.

Q. Had Huntington been arrested before this? *A.* No, Sir.

Q. How soon, after taking copies of the notes, was he arrested?

A. I should think about an hour, Sir.

Wm. E. Dodge, Jr., called. Examined by Mr. Noyes:

Q. Were you a member of the firm of Phelps, Dodge & Co., in June and July last? *A.* I was, Sir.

Q. How long? *A.* I was three years on the first of January.

Q. Are you acquainted with the handwriting of all the members of that firm? *A.* I am, Sir.

Q. Look at that note (marked B) and say whether it is the signature of any member of that firm? *A.* It is not, Sir.

Q. Was that signature authorized by you, or any other member of the firm, to your knowledge? *A.* It was not, Sir.

Q. Is it an attempt to imitate the signature of the firm?

A. I should judge it to be so, Sir.

Q. When did you first see it, or know of its existence?

A. I have never seen the notes before, Sir, to my knowledge.

Cross-examined by Mr. Brady.

Q. Is that signature a close resemblance, or a poor imitation, of Mr. Stokes' writing of the firm's name?

A. The general resemblance is good, but not a close imitation.

Q. A moment's glance would show you it was a forgery?

A. It would show me.

Q. What do you say in reference to the signature of that other note (due October 4) as to its being a close or poor imitation?

A. The imitation is a poor one, Sir, not calculated to deceive those acquainted with the signature of the firm.

Q. Poorer than the last?

A. I should think about the same thing; perhaps a trifle better. The "P" is like Mr. Stokes', somewhat.

Anson G. Phelps, examined by Mr. Noyes.

Q. You are a member of the firm of Phelps, Dodge & Co.?

A. I am, Sir.

Q. Look at that note, (handing note marked B) and see whether the signature is that of any member of the house! *A.* It is not, Sir.

Q. Was it authorized by yourself, or any member of the house, to your knowledge? *A.* It was not, Sir.

Q. When did you first see it, Sir? *A.* At this time, Sir.

Q. You never saw it until to-day? *A.* No, Sir.

Cross-examined by Mr. Brady.

Q. Is it a poor imitation, Sir? *A.* I should think it was a very poor one.

D. Willis James, examined by Mr. Noyes.

Q. You are a member of the house of Phelps, Dodge & Co.?

A. I am, Sir.

Q. Is that (handing note marked B) the signature of any member of that firm? *A.* No, Sir.

Q. Was it authorized by you, or any member of the firm, to your knowledge? *A.* It was not, Sir.

W. J. Stoughtenberg, examined by Mr. Noyes.

Q. What was your business in June and July last?

A. Book-keeper of Harbeck & Co.

Q. In what were they engaged? *A.* Ship owners and stave merchants.

Q. What are the names of the members of the firm?

A. John H. Harbeck and William H. Harbeck.

Q. Do you know the prisoner, Huntington?

A. I have frequently seen him in the office of the Harbecks, and in Mr. Belden's.

Q. What is the number, in Wall street, of those offices? *A.* No. 60.

Q. All in the same suite of rooms, in Jones' Court? *A.* Yes, Sir.

Q. You have seen Huntington there frequently? *A.* Yes, Sir.

Q. Did you ever see those five notes before? [Handing note marked B and the others before produced.] *A.* I have, Sir.

Q. When did you first see them, and in whose possession?

A. On the 6th of September last. They were handed me by Mr. Wm. H. Harbeck.

Q. Where was that? *A.* At our office, Sir.

Q. Were any other persons there? *A.* Not that I am aware of.

Q. For what purpose were they handed to you?

A. As collateral security for a loan to Mr. Huntington, for $21,000.

Mr. Brady objected, unless the witness knew the fact himself.

Q. Do you know from whom Mr. Harbeck received the notes?

A. They were presented to me as from Mr. Huntington. I only know by Mr. Harbeck's representations.

Q. Were you present when he received them from any one?

A. I cannot say positively whom he received them from.

Q. Were you present when any transactions took place between Mr. Harbeck and Mr. Huntington, in regard to those notes?

A. I cannot say positively.

Q. Look at that check, (for $21,000) and say what you know about it.

A. I drew that check on the 6th of September.

[This check is as follows—the written portions in italics:

Harbeck & Co.

No. New York, 6 *Sept.*, 1856.

UNION BANK,

Pay to_____ or_____

Twenty-one thousand dollars.

$21,000. *HARBECK & CO.*

Stamped across the face "For Deposit in Bank of Republic: C. B. Huntington." Written across the face "*Smith.*"]

Q. What did you do with it after you had drawn it?

A. I handed it to Mr. Huntington, in our office.

Q. Where was Mr. Harbeck at that time?

A. The check was signed by him.

Q. When you handed the check to Huntington, did he give you any thing back? *Q.* No, Sir.

Q. Those other two checks (handing papers) connected with that, did you ever see them before? *A.* I first saw them on the 6th of September.

[These two checks are as follows, the written portions being in italics:

No. New York, *Sept.* 5, 1856.

MECHANICS BANKING ASSOCIATION.

Pay to_____ or bearer,

Twenty-one thousand dollars.

$21,000. HOFFMAN & LEONARD.

Charles B. Huntington, 52 Wall street.

No. New York, *Sept.* 9, 1856.

BANK OF REPUBLIC,

Pay to the order of *Harbeck & Co. twenty-one thousand* dollars.

$21000.

CHS. B. HUNTINGTON.

No endorsement.]

Q. State what you know about them.

A. They were given to me by Mr. Harbeck.

Q. At the time he gave you those notes? *A.* Yes, Sir.

Q. Did you see from whom he got those other two checks?

A. I did not, Sir.

Q. All you know is that he gave you those five notes and those two checks. What did you then do?

A. I inclosed them in an envelope immediately after I gave the check to Huntington.

Q. Did you draw the check before or after Harbeck gave you the notes?

A. Previous. I gave the check to Huntington and then received the note.

Q. Whose memorandum is that on the envelope? *A.* My own.

Q. Made when? *A.* I cannot say when. Some time afterwards.

Q. What is that memorandum intended for?

A. It mentions that those were collaterals for a loan made on the 6th of September to ———

Mr. Brady objected to the witness designating the transaction from any thing he was told.

Q. Do you know whether that check you drew has been paid?

A. It has, Sir.

Q. It has the bank mark on it? *A.* Yes, Sir.

Q. Are those the notes upon the security of which that loan was made

Mr. Brady objected.

Q. Do you *know* from what occurred, whether the check was made on those notes?

A. I know that the loan was made on those two checks, and the notes, as collaterals.

Cross-examined by Mr. Brady.

Q. If I understand you correctly, you did not hear one word of the conversation between Mr. Huntington and Mr. Harbeck about this money?

A. I did not, Sir.

Q. And whether Mr. Harbeck was paying a debt he owed to Mr. Huntington, or not, you do not know of your own knowledge? *A.* No, Sir.

Q. You could not say if he had borrowed it the day before, in the street? *A.* No, Sir, not in that case.

Q. How then do you know that this was a check given on those notes as collateral security?

A. I know it by representations made by Mr. Harbeck.

Q. And in that way alone? *A.* Yes, Sir.

Q. You do not know anything about the terms or conditions of that loan to Mr. Huntington, if it were one? *A.* No, Sir.

Wm. H. Harbeck sworn. Examined by Mr. Noyes.

Q. How long had you known Huntington prior to September last?

A. About eleven months.

Q. You are a member of the firm of Harbeck & Co. of No. 60 Wall street? *A.* Yes, Sir.

Q. State whether he applied to you for any money on the 16th of September last? *A.* He did, Sir, for $21,000.

Q. On what security?

A. On this check of Hoffman & Leonard, for $21,000, dated September 5, his own check on the Bank of the Republic, and those five notes.

Mr. Noyes:—I will state what these are. One is a note of Phelps, Dodge & Co., (the note in the indictment) dated July 1st, 1856, for $6,500, at four months, payable to the order of themselves at the bank of Commerce, for value received of the Minnesota Mining Company.

A note of Peter K. Knapp, dated March 12th, 1856, for $5,500, at nine months, payable to the order of himself.

A note of Bliss, Briggs & Douglass, dated July 2, 1856, for $5,569 44, at four months, payable to the order of themselves.

A note of Thomas N. Dale & Co., dated June 13th, 1856, for $2,331 44, at nine months, payable to the order of Thos. N. Dale & Co.

A draft of J. W. Kingsley, dated July 1st, 1856, for $7,500, on Graydon, Swanwick & Co., at four months, to the order of himself.

Q. State, Mr. Harbeck, whether that check you hold in your hand is a check for the money advanced? *A.* Yes, Sir.

Q. Was it paid, Sir? *A.* Yes, Sir.

Q. And when was it returned to your house by the bank?

A. I cannot say positively about that. When the book was written up, the check was returned.

Q. Has *that* check (handing check) any mark to distinguish it?

A. It is marked certified by the bank, by "Smith," and "for deposit in bank of the Republic,—C. B. Huntington."

Q. Has the money ever been returned to you on Huntington's check?

A. No, Sir.

Q. Had you any other security for this loan than those two checks, four notes and the draft? *A.* No, Sir.

Mr. Noyes:—I put in evidence the check of Hoffman and Leonard, the check of Harbeck and Co., the four notes and drafts, together with the paper (envelope) which Mr. Stoughtenberg identified.

Q. In whose handwriting is the memorandum on that paper? (envelope)

A. In Mr. Stoughtenberg's.

Q. Did you ever see the notes and draft, and check of Leonard and Hoffman, until brought to you by Huntington on that day? *A.* No, Sir.

Q. After you received them, what did you do with them?

A. I passed them over to Stoughtenberg, and asked him to put them into an envelope?

Q. And this is the envelope? *A.* He told me so.

Mr. Noyes:—I put in this envelope, marked Sept. 6th, in Stoughtenberg's handwriting.

[It is as follows, all except the words "Collateral," and "No." being written:—

Sept. 6.

COLLATERAL.

No.——57. $21.000.

SPECIAL.

Jan. 1, *a* 4 mo. J. W. Kingsley, own order on Graydon, Swanwick & Co.,	7.500,00
" 2, *a* 4 mo. Bliss, Briggs & Douglas, " " "	5,569,44
March 2, *a* 9 mo. P. K. Knapp, own order,	5,500,00
June 13, *a* 9 mo. Thomas N. Dale & Co., own order,	2,331,44
July, 1, *a* 4 mo. Phelps, Dodge & C.,	6,500,44

A large buff envelope.]

Q. When did you first discover that there was a question about the genuineness of these instruments—I mean the notes and draft?

A. The day after Huntington's first arrest, I discovered about Phelps, Dodge & Co. Then I gave the others to Mr. Bowyer, and he pronounced them forgeries.

Cross Examined by Mr. Brady.

Q. Can you tell me when you first made the acquaintance of Mr. Huntington?

A. I think it was about October, 1855.

Q. Was he introduced to you? *A.* I cannot say he was.

Q. How did you make his acquaintance?

A. I saw him in Mr. Belden's office.—Charles Belden & Co.

Q. Was their office the same number in Wall street as yours then?

A. Yes, Sir.

Q. Did you occupy together a suite of rooms, or rooms on the same floor? *A.* We had four rooms on the same floor.

Q. Did they communicate with each other?

A. They went right through to each other.

Q. Was there any connection in business between the firms of Belden & Co., and Harbeck & Co.?

A. Belden owned some ship property with Harbeck & Co.

Q. Any business connection in the office? *A.* No, Sir.

Q. In their business transactions they were entirely independent of each other? *A.* Yes, Sir.

Q. When had you your first business transactions with Huntington?

A. In January, 1856.

Q. Between October, 1855, when you first made his acquaintance, and January 1856, did you see him often? *A.* Yes, Sir, in Mr. Belden's office.

Q. Was he there almost every day?

A. I cannot say every day. He was there often.

Q. What was the general character of the business transacted between you and Mr Huntington in 1856? *A.* I loaned him money, Sir.

Q. You had no other business with him than loaning him money from time to time? *A.* No, Sir.

Q. Was that frequently the case in January or February?

A. Not very frequently in January or February. I left New York on the 25th of February and went down South, and came home in April.

Q. The transactions that were made during your absence, if any, were carried on by your brother? *A.* No, Sir, by Mr Halsey, I think.

Q. Were these transactions in January and February?

A. Very few, Sir.

Q. About what amouut? *A.* I cannot say.

Q. Your books show? *A.* Not exactly.

Q. Were not these transactions entered in your books?

A. I might lend him $8,000 or $4,000 on a note, and he might return it to me.

Q. Did you not enter all your transactions in your books?

A. I cannot say, positively, whether I did or did not.

Q. Did you not receive a subpœna from us to bring your books?

A. Yes, Sir.

Q. Have you them in Court?

A. There are *some* books here. I took them into the District Attorney's office.

Q. Did you cause to be entered in your books your transactions with Mr. Huntington in January and February 1856—all of them?

A. We might not all. I cannot say positively whether we did or not.

Q. Did your partner have an interest in those transactions?

A. Yes, Sir.

Q. How was the division of profits between you and your partner to be arrived at except by entries in your books?

A. I presume there are entries.

Q. Were there not entries of every transaction with Huntington?

A. I do not know that there are.

Q. If there was any one omitted, why was it omitted?

A. I do not know any particular reason.

Q. You have all the books of January or February, 1856?

A. Yes, Sir.

Q. What books did you keep at that time?

A. A cash-book, check-book and ledger.

Q. You kept a book marked "special," did you not, in January or February, 1856? *A.* No, Sir.

Q. Did you ever keep such a book?

A. I do not know of any book called special.

Q. Or any book bearing that designation in your mind? What is the meaning of the word special on the back of *this?* (The envelope.)

A. The meaning is that I loaned Mr. Huntington money, for other parties.

Q. Do you call every loan "special," when made to one man for another?

A. No, Sir. It was not usual.

Q. Did you conduct your business with Huntington in a different manner from that with other people? *A.* No, Sir.

Q. How did you come to enter the word "special" here?

A. Simply because it was loaned for other parties.

Q. Was that word "special" ever used before? *A.* I think not, Sir.

Q. Are you sure? *A.* I am sure.

Q. Is that word "special" written by you?

A. I think it is Mr. Stoughtenberg's writing.

Q. Had you in your possession at the time of those transactions a marble-covered book, like this? (Exhibiting book.)

A. We had in the months of June, July, August and September.

Q. What was the character of that book?

A. It was a memorandum book, where we entered money loaned on notes, and the collaterals.

Q. What became of it? *A.* I ordered it to be destroyed. (Sensation.)

Q. When? *A.* About the 12th of October.

Q. After Mr. Huntington's arrest? *A.* Yes, Sir.

Q. Why?

A. I did not want any one to know how much money I lent to Huntington. That is the reason.

Q. Is that the only reason? *A.* That is the only reason.

Q. Were you afraid it would hurt Huntington?

A. No, Sir. I did not want people to know how much I lost by Huntington.

Q. But how were they to know? You had the book in your possession?

A. I did not want to have before my own eyes how much I lost by him.

Q. Do you tell this Jury that the only motive you had for destroying this book was, that you might lose the recollection of how much money you lost by Huntingdon? *A.* I do, Sir. (Sensation.)

Q. And that you had no other motive or object in the act?

A. No, Sir, I had no other motive.

Q. Had you not in your possession some vouchers for every dollar you lent Huntington? *A.* No, Sir.

Q. You had for this loan of 6th Sept? *A.* Yes, Sir.

Q. You had had securities before that from Huntington, for loans previous to the 6th of Sept? *A.* Yes, Sir.

Q. What became of them? *A.* The Police officer got them, Sir.

Q. For all the previous loans?

A. Yes, Sir, for those previous and since.

Q. I am speaking of loans before the 6th of Sept. Had you securities for those previous loans? *A.* Yes, Sir.

Q. In whose possession are they?

A. They are either paid, or in the possession of the Police department.

Q. On the 6th of Sept., had you in your possession any writing, paper, or security for any loan which you had ever before that day made to Huntington?

A. If I had made loans to Huntington before that day, I had the securities, if the notes had not been paid off.

Q. Had you any?

A. I cannot say. I can tell by looking at the books.

Q. Did Huntington owe you any thing on the 6th of Sept., when he came to take this new loan?

A. Considerable, Sir, about $50,000, or upwards.

Q. Was he a debtor on loans to as much as $100,000?

A. Perhaps so.

Q. To $150,000? *A.* I cannot say.

Q. Will you state that he did not owe you on loans, secured or otherwise, to as much as $350,000? *A.* I will, Sir.

Q. What was the minimum? *A.* I cannot say, Sir.

Q. If that book you destroyed on 12th of Oct. were here, what would it show?

A. It would show a loan, if I lent him $20,000 and the names of the notes pledged as collaterals for the loan.

Q. And that is all? *A.* That is all.

Q. Was that book got expressly to show your transactions with Huntington? *A.* Mr. Stoughtenberg got it. You might call it that.

Q. Was it a book in which it was your intention to have no transactions entered except those with Huntington? *A.* Yes, Sir.

Q. And is it the fact that no other transactions but those were entered in it? *A.* Yes, Sir.

Q. How many pages were written on, when it was destroyed?

A. I cannot say.

Q. Was it a blank book like *this?* (showing one.)

A. I do not think it was as thick as that.

Q. Did any one know of your destroying it, except yourself?

A. Yes, Sir; Mr. Halsey, and Mr. Stoughtenberg. It was burned up in the presence of Halsey & Stoughtenberg, I think. Mr. Halsey was present.

Q. Was the object of burning it communicated to them?

A. I think so, Sir.

Q. How were you compensated for the loans you gave to Huntington? I take it for granted now that you gave those loans to make money.

A. They are not paid.

Q. What were you to get? *A.* Seven per cent, per annum.

Q. And nothing more? *A.* Nothing more. (sensation.)

The District Attorney: It is my duty, at this stage of the examination, to object to a further consumption of time in showing the specialities or details of prior transactions between Mr. Harbeck and Mr. Huntington. We suppose we have a right to confine this inquiry to the *res gestæ* of the case. We prove a specific uttering of forged paper by the defendant on the 6th of September, and we have a right to object to any evidence of previous transactions with the witness, as irrelevant.

Mr. Brady: So far as the learned District Attorney expresses a wish to economize time, of course I concur with him to the extent that, however serious or important an investigation may be, no more time should be assigned to it than is necessary for the development of the truth; but he will agree with me that no less time is adequate than what is due to the attainment of those ends. The importance of this case has not been exaggerated by him in his opening, and no one but my client can estimate how important it is to him that the whole of these transactions should be brought to light. I never put a question without having a definite purpose; and as I differ from the learned District Attorney on several propositions of law, it is necessary to advert to one or two, to show the relevancy of the testimony I now offer. My learned friend has stated in his opening that in a certain contingency, the jury will become mere puppets or automatons in the hands of the law: that is, that if certain facts or circumstances were developed in the case, the law would step in, and decide that the jury had nothing to do. I take issue on that proposition, generally and in detail; and I now claim that as to questions of fact the jury alone is to respond, and that your Honor has no right to express an opinion upon any of them. A great question in one branch of this case is, whether, if Mr. Huntington did utter this alleged forged paper, within the meaning of the law, there was any intention on his part to defraud Mr. Harbeck, or any other person, as charged in the indictment. That is exclusively a question of fact for the jury; and however lawyers may speculate, and whatever your honor may declare to be the legal presumption, that is a question, which so far as my humble abilities can prevent, no power on earth shall take from them. I say this because I am perfectly aware that it is stated in some elementary treatises, that, certain facts appearing, the law will infer certain things, as for example, if a man having forged paper in his possession, take it to another person, knowing it to be forged, and gets property on it, he shall not be allowed to say he did not intend to defraud. That is a position which I shall combat. I say that if twenty millions of dollars had been obtained on forged paper, and the party knew it to be forged, that is not enough to *compel* the jury to determine that he intended to defraud any one. Now if the learned gentleman wants this jury to infer the intent of Huntington to defraud from the fact that he did defraud, am I to be prevented from going

into all the transactions to prove, it may be, that he never owed Harbeck a cent in the world? How does my learned friend know? They call the witness to prove that he lent $21,000 to Huntington on the 6th September, upon those notes as security. Am I to leave the case in that condition —to let it appear that this man has been defrauded of $21,000, and have the jury infer from that that Huntington intended to defraud him? Can I be shut out from all the surrounding circumstances, to show the characteristics of the case? The learned gentleman says I am not to go back of this period. I propose to show that all those loans and transactions hinged and depended upon each other, so as to form one continuous dealing, the result of which is to show whether Mr. Harbeck was defrauded or not, or whether Huntington intended to defraud him. We have the singular fact in evidence, that on the 12th of October, immediately succeeding the arrest of Huntington, the witness destroyed a piece of evidence of immense consequence and value to himself and to Mr. Huntington, relating to the transactions between them. Whether it related to the transaction of September or not, we cannot ascertain, and I should like to know if I have not a right, when the witness confesses that he destroyed a certain piece of evidence, which might be of value to the person on trial, to submit to the jury evidence which may show the true character of the transaction? The law imputes to a man who destroys a piece of evidence, an improper motive. Mr. Harbeck gives his explanation, and that can go to the jury, but we do not know what the jury may think of this matter. I am testing the witness's memory, and examining him with a view to show, in point of fact, whether or not he was defrauded; for I hope to make it appear as clear as the brightest ray of sunshine that has illuminated this room, that there never was the slightest intention on the part of Mr. Huntington to defraud any man, and in preventing me from showing all the circumstances, I think the learned gentleman is shutting out the light. I claim that the transactions between Mr. Harbeck and Mr. Huntington are open to my investigation, to overthrow the conclusion sought to be established by the prosecution, that a fraud was perpetrated on Mr. Harbeck. Your Honor will remember the way in which the question arises. It is this: I have been permitted to ask him about the nature and character of the loans, generally, about their amounts, whether he had securities for the previous loans, and what became of them; and now I have got down to the point, what was the compensation and mode of compensation he obtained on those loans? Is not that pretty essential? Suppose it turned out that these securities were deposited, not for a loan of $21,000, and not intended to be collateral security for anything: suppose they were nothing but forms and shadows, and so understood between the parties: suppose that Huntington and Harbeck had a perfect understanding with each other as to the mode of carrying on business, where they would stand in the relation of principals to third parties: I claim the right to cross-examine the witness to support any theory contrary to that of the prosecution. I want to find out whether there was any fraud, and we will consider before the jury whether the allegation that Mr. Huntington intended to defraud Mr. Harbeck is sustained by the proof, or not.

The District Attorney: I will come back directly to the question started from—what is the relevancy of the evidence now sought to be obtained

from Mr. Harbeck. We have proved by him that on a certain day he gave his check to Mr. Huntington for $21,000, which money passed into Mr. Huntington's coffers; that he received certain notes and checks as collateral security; and we have presumptive proof that they are forgeries. We have allowed evidence to show that there was a large financial business established between Mr. Harbeck and Mr. Huntington; and that works in our favor to this extent, that it proves Mr. Huntington had established a confidence with Mr. Harbeck down to a certain point where he could defraud Mr. Harbeck by a skillfully planned forgery. The charge is, that Mr. Huntington intended to defraud Mr. Harbeck in the transaction of the 6th of September. Now, no matter how other matters stood on that day—whether Mr. Huntington was owed by Mr. Harbeck a million of dollars, or not,—here is an entirely isolated and independent transaction, to which the intent to defraud relates; and the moment the jury come to contemplate other transactions, there is danger of confusing their mind with irrelevant matter. My learned friend says that the witness has destroyed certain evidence connected with the transactions between him and Huntington. We deny that that book could be evidence in this case. It was the most natural thing in the world that Mr. Harbeck should destroy that book. It was one of those disagreeable remembrances of confidence betrayed, of folly, one of those skeletons that every man desires to be rid of. But this whole transaction appears unclouded by any collateral matter, so far as the prosecution is concerned; and if we are to go into other transactions, there is no knowing how long a time we are to spend here.

The Court: The defendant is indicted for forging a particular note, in a particular transaction. Now the counsel for the prisoner desires to go back of that transaction, into other transactions, which existed before between these parties. I am unable to see how the state of business between those parties before this thing took place can have an effect in any way on the merits of this issue. I cannot see that this testimony can be used legitimately, except to test the credibility of the witness; then I can understand the rule to be that you may go into irrelevant testimony for that purpose. I do not want to shut out any testimony that I can see has a legitimate bearing, no matter how distant, on the issue; but I am unable to see how this can have any. Suppose it true that the defendant had loaned the witness money, and had been charged exorbitant interest, I cannot see how that can have any bearing on the question whether the defendant forged this particular paper. At this time I do not want to say what I think as to the question of actual damage to be sustained to prove the intent to defraud. That is not necessary. Suppose it necessary to prove, that in consequence of this particular forgery, the party had been damaged, it would be a damage resulting from this transaction, and not from former transactions. I think I am bound to shut it out.

Mr. Brady: The question I put is this:

What was the compensation agreed to be paid by Huntington to you for the loans which you made to him, as you have stated, prior to September 6th, 1856?

Now I wish to say to your Honor, to prevent any misunderstanding, that I understand the District Attorney to contend that the intent to defraud would be conclusively established when the actual defrauding was proved, and that it will not answer for a person who did defraud another, to say

that he did not intend to do it. I differ from him entirely, and will show that although you may in law infer an intent from a certain state of things, the Jury are not *bound* to draw any conclusion from any state of facts. That is an atrocious error.

The Court: There is this about it, that whether the jury have the right or not, if they do so we have no remedy.

District Attorney: The learned gentleman misunderstands me in thinking I hold that, if a man is defrauded, that is evidence that the party intended to defraud. I merely say it is presumptive. There must be an intent to defraud shown, but we differ as to the extent. While, to show that a man intended to defraud, it is immaterial whether there was an actual defrauding or not, the fact of actual defrauding goes far to show the intent.

Mr. Brady: I say that the jury are not *bound* to any conclusion from any state of facts. I wish this offer to be narrowed down to the specific question. My learned friend objects to our showing the rate of compensation agreed on between Harbeck and the defendant, for loans made the latter previous to the 6th of September; and your Honor excludes that proof.

The Court: I feel that I must.

Mr. Brady: Very well, Sir, we take exception.

The usual hour for adjournment having arrived, the Court, after administering to the jury the caution of yesterday, adjourned to 10 o'clock, on Thursday morning.

Thursday, Dec. 18, 1856.*—*William H. Harbeck's* cross-examination continued by Mr. Brady.

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* "The trial of Huntington was resumed to-day before a small public audience. The smallness of the attendance was attributable in some measure to the stern refusal on the part of the officers at the door to give admission to mere quid-nuncs, but chiefly to the fact that there were very few quid-nuncs at the door to trouble them. The weather, in the first place, was too cold; and in the next place the Huntington affair, which, at the best, must pale its ineffectual fires before the revelations of Dr. Thrasher Lyons' more recent adventures, is now rather *passé*. Everybody knows everything about it that anybody wants to know anything about. Hence the collapse in public curiosity as to the trial. The proceedings to-day, however, had an interest *per se*."—*Extract from The N. Y. Daily Times of Dec.* 19.

"THE HUNTINGTON TRIAL.—If carelessness and confidence be synonymous terms, then certainly it would seem that the money-dealing fraternity of Wall-street must be the most confiding class of this entire Christian community. The evidence elicited at the trial of Huntington, yesterday, exhibits, on the face of it, a mode of doing business which, if universal, stamps Wall-street either as an Arcadia of innocence and simplicity, or a phalanstery of careless capitalists. Mr. Huntington seems to have carried on his most gigantic operations by a series of *coups de main*. "Here," he says to a broker, "lend me twenty or thirty thousand dollars on my note at three days, and these checks, amounting to thirty thousand dollars, as collateral security." He thrusts into the broker's hand his note, and half a dozen checks on well-known houses—all of these checks being filled up in the same handwriting and on the same printed forms, and the signatures such palpable forgeries as to bear little or no resemblance to the originals—and yet, will it be believed, the money is lent without a shadow of hesitation! The full report of the testimony given on Huntington's trial yesterday, which is published elsewhere in the TIMES of to-day, cannot fail to arrest public attention, if not excite public astonishment."—*From the same: an Editorial.*

"TRIAL OF HUNTINGTON, THE WALL-STREET MAN.—One of our criminal courts is occupied at the present time in the trial of that distinguished operator, Charles B. Huntington, and the case is exciting all the interest that is due to the fame of the

Q. On the 6th of September, when you say this loan of $21,000 was made, was Huntington in good credit with you?—*A.* Yes.

Q. Had he established a credit with you? Had he any?

A. I would loan him money on securities.

Q. Well, had he so far gained a credit that you would have loaned him any money without securities?—*A.* No, Sir.

Q. Had your brother and you separate and distinct business affairs?

A. We had some.

Q. Some? *A.* Some, Sir.

Q. How was it as to these loans of money?

Witness: These loans of $21,000?

Mr. Brady: Yes.

Witness: That belongs to Harbeck & Co.

Q. The firm composed of you and your brother? *A.* Yes, Sir.

Q. Are you sure it was on the 6th of September that that loan was made? *A.* Yes, Sir.

Q. Can you now remember whether you had at that time in your

Witness: Any what?

hands any securities of any kind which Huntington had deposited with you

Mr. Brady: Any securities.

Witness: For other loans?

Mr. Brady: Yes.

Witness: Yes, Sir; I had other securities for other loans.

Q. How long had your firm been in the habit of lending money on papers in Wall street?

A. We never did a great deal before the year 18—

Q. Well, how much?

A. I could not tell you. We never did much before the year 1856.

Q. You know there was such a firm in New York as Phelps, Dodge & Co.? *A.* Yes, Sir.

Q. How long have you known that firm?

A. A number of years.

Q. Where is their place of business?

A. I cannot say properly where their place of business is.

Q. Have you ever seen their paper in Wall street?

A. I have from Mr Huntington.

Q. Of no others? *A.* No, Sir.

Q. Did you ever receive it except from Huntington in course of business? *A.* Not to my knowledge.

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man and the notoriety of his exploits. It is not becoming that we should say any thing at this time which could influence the judge or the jury, but, when we recollect the escape of Schuyler, and the secret efforts which were made to prevent his recapture and return, the abortive attempt recently made to administer justice to a man who openly killed a fellow creature in a bar-room, the hundred and fifty to two hundred indictments against the faro establishments, and the two thousand indictments against offenders of various grades, which lie on the calendar covered up with the dust of years, there seems very little improbability of the public deciding erroneously in this case. Huntington is charged with forgery. But he was also well known as a distinguished bull operator, and he is ending his career as many other bull operators have done, both here and elsewhere."—*From the New York Herald, Dec.* 19: *Editorial extract.*

Q. Either for a loan or in payment of any thing?
A. Not to my knowledge.
Q. Did you know of any such firm as Hoffman & Leonard?
A. I understood there was such a firm.
Q. When did you first understand there was such a firm?
A. About that time.
Q. And understood it of whom?
A. From the check which was given me by Mr. Huntington.
Q. Did you understand it in any other way? *A.* No, Sir.
Q. Did you know what their business was at that time?
A. I understood they were lawyers.
Q. You understood so then?
A. Since then I understood they were lawyers.
Q. Did you understand so then? *A.* No, Sir.
Q. You did not know; then you were not informed what their business was? *A.* No, Sir.
Q. Is there any such firm now?
A. I understand the firm now is Leonard and Hoffman.
Q. Was it ever otherwise to your knowledge? *A.* I cannot say.
Q. Do you know where their office was at that time? *A.* No, Sir.
Q. Don't you know now?
A. I believe it is right across the way from our office.
Q. Don't you know it was? *A.* I cannot say; I don't think I did.
Q. Could you not in looking out of your office, see their sign?
A. Yes, if I went across the way I could see their sign.
Q. What is their sign? *A.* I never took notice of it.
Q. Don't you know now?
A. I have been informed that it is Leonard and Hoffman now, instead of Hoffman and Leonard; I don't know from any actual observation, that that is the firm's name, and always has been so.
Q. This check is:

New York, Sept. 5th, 1856.

"Mechanics' Banking Association, pay to (——) " or bearer, Twenty-one Thousand Dollars.

$21,000 "HOFFMAN & LEONARD."

That is dated Sept. 5th; is not that the date the loan was made?
A. No, Sir.
Q. Now, this is the piece of paper on which the loan was first asked?
Witness: Let me see it, and I will tell you.
Mr. Brady: That—(the paper handed to witness)—is what I have read.
Witness: Yes, Sir.
Q. On that the loan was asked? *A.* No.
Q. Well, on what was it asked? *A.* On that and other notes.
Q. The other notes that have been exhibited here to you by Mr. Noyes? *A.* Yes, Sir; those were the notes.
(Mr. Brady read the titles of the notes, and proceeded.)
Q. Did you know at any time, any such person as Knapp?
A. Not personally.
Q. Did you know what his business was?
A. I understood he was an importer.
Q. Where? *A.* In Broad Street.

Q. Who told you? *A.* Mr. Huntington.
Q. Is that all you know about it?
A. Mr. Belden, I think, informed me that Peter G. Knapp was good.
Q. Peter G.?
A. Peter *K.* Knapp was good.
Q. When did Mr. Belden inform you of that?
A. Sometime before that.
Q. Had you had any dealings with Mr. Knapp? *A.* No, Sir.
Q. Did not know his handwriting? *A.* No, Sir.
Q. Bliss, Briggs, & Douglas; did you know them?
Witness: Do I know them? *Counsel*: Yes.
Witness.—I understood they were dry goods merchants.
Q. From whom? *A.* From Mr. Huntington.
Q. At that time? *A.* No, before that.
Q. Did you know their handwriting? *A.* No, Sir.
Q. Where did you understand their place of business to be?
A. I cannot say.
Q. Well, it was in the city? *A.* Yes, Sir.
Q. Thomas N. Dale & Co.; what did you know about that firm?
A. Well, I understood they were good.
Q. What did you understand to be their business?
Q. I understood their business (witness hesitates) was "sheetings."
Q. What? *A.* Was importers or "sheetings;" I am not sure which.
Q. In what place? *A.* In New York.
A. Did you know any of the firm? *A.* No, Sir.
Q. J. W. Kingsley; what do you know about him? Did you know him? *A.* No, Sir.
Q. Do you know where his place of business was? *A.* No, Sir.
Q. That note was for $7,500, and was one of the collaterals you too although you did not know the man?
A. That is an acceptance I believe, it is a draft on Graydon, Swanwick & Co.
Mr. Noyes: It is an accepted draft.
Mr. Brady: Do you know that firm?
Witness: I have heard of it.
Q. Where was their place of business? *A.* In Broadway.
Q. Did you know any of that firm? *A.* No, Sir.
Q. What did you know about their responsibility?
A. I had heard it was good.
Q. From whom? *A.* Mr. Huntington told me.
Q. Now all these statements that Huntington made about the goodness of these various persons and firms were all made before the sixth of September, were they? *A.* Yes, Sir.
Q. At the time of this particular loan, he made no statement about the responsibility of any of those parties, did he? *A.* No, Sir.
Q. Had you inquired nothing about it?
A. No, Sir; I was satisfied with the paper.
Q. Here is the other check:

"New York, Sept. 6th., 1856."
"Union Bank: pay to——— twenty-one thousand dollars,
$21,009, HARBECK & CO.

That is the day, Sept. 6th, you made that loan? *A.* Yes, Sir.

Q. And here is the check of Mr. Huntington:

"New York, Sept. 9th, 1856.
" Bank of the Republic: pay to Harbeck & Co., twenty-one thousand dollars,
21,000. C. B. HUNTINGTON."
(Not endorsed.)

That, then, was a three days' loan; was it?

A. Yes, Sir; he said he wanted to borrow it for a few days.

Q Did he say whether he wanted to borrow it for himself or for another person?

A. He said he wanted to borrow it for Hoffman & Leonard.

Q. And you believed that? *A.* I believed him, Sir.

Q. Was that the time he told you what their business was?

Witness: Told me about what business?

Mr. Brady: The business of Hoffman & Leonard.

Witness: He did not tell me what their business was.

Q. Did he never tell you that they were lawyers? *A.* He has since.

Q. Since that time? *A.* Yes, Sir.

Q. What was the agreement as to the compensation to be made for that loan? *A.* No agreement.

Q. Nothing said about it? *A.* No, Sir.

Q. Not even as to the seven per cent.?

A. My understanding with Mr. Huntington was, that on any money he borrowed he was to pay me seven per cent. per annum; and when he paid me the principal and interest, I had no claim of any kind or nature against him.

Mr. Brady: I understand that. That was all the understanding, wasn't it?

A. Yes, Sir (a laugh).

Q. You had not the least expectation that you were to get anything more than seven per cent.? *A.* No, Sir, I expected to get seven per cent.

Q. And nothing more?

A. No, Sir; it was my bargain—the understanding.

Q. And expectation?

A. No, Sir; I did not expect any more than that (suppressed laughter).

Q. There was no such thing as an expectation, that when he came to pay up a loan he might have the *privilege* of paying something extra for it?

A. He always paid the loan at 7 per cent. per annum, and gave me a check for the amount.

Q. There was no expectation that when he paid up the loan, he would give any thing more than 7 per cent.? *A.* No, Sir.

Q. And he never has?

A. He gave me 7 per cent. when he paid me a loan.

Q. And nothing more?

A. No, Sir. (Sensation and a pause, during which there was a brief consultation between the prisoner's counsel. While this was going on, the witness shrugged his shoulders and remarked, *sotto voce*, to the effect that he never heard such d—d queer nonsensical stuff in all his life. *See Times' report*).

Q. And all the benefit that you expected to derive in any way whatever for loaning this $21,000, was the payment of 7 per cent. per annum, on that amount? *A.* That was all my understanding with him (laughter).

Q. And all your expectation?

A. Yes, Sir; I had no claim on him for any more.

Mr. Brady. I don't talk about your claim on him, but about your expectation. Did you have any expectation?

Witness. No, Sir, (increased sensation).

Q. And there was no sign, word, look or gesture—

Witness: No, Sir. (Witness answering prematurely).

Mr. Brady: Wait a minute, I have not got half through.

Witness: Well, go ahead (a laugh).

Question resumed:—which was intended to convey the idea between you and him, that there was any possibility that you could or would ever receive any more for that loan than 7 per cent. per annum?

A. No, Sir (increased laughter and considerable confusion in court, which the officers promptly suppressed).

Q. And if he had given you any more than 7 per cent., you would have been very much surprised?

A. If he had I would have returned it to him. If he paid me more than 7 per cent. on a loan, I told Mr. Stoughtenberg to return it to him.

Q. That was the current rate in Wall Street at that time, for good paper, wasn't it?

A. Well, you could buy and sell paper at 7 per cent. per annum, 8 per cent., 9 per cent., 10 per cent., and so on up.

Q. Was that the current ordinary rate?

A. I did not discount any paper.

Q. Well, for buying it, or obtaining it, or giving money for it—I don't care what you term it? *A.* I did not buy it.

Mr. Brady: That is no answer to my question. Do you want to show me how smart you are?

Mr. Noyes: There is no necessity, if the Court please, for this. The counsel puts the question simply as if the paper had been bought, and the the witness says he did not buy the paper.

The Court: He means they made loans of money, for which they took paper as security. *Mr. Noyes.* Yes, Sir.

Mr. Brady: Well, you have decided that he has answered the question properly. (Laughter.)

Mr. Noyes: Neither you nor I can decide any thing here.

Mr. Brady: I say he has equivocated in the extreme. Now, I put my question in the broadest possible way. For discounting, buying, giving money for paper—was that the current rate in Wall street?

Witness: I don't know.

Q. Don't you know that it was not? *A.* No, I don't.

Q. Was not that book which you yesterday said you had destroyed, a book in which you entered or caused to be entered, a loan or loans made at the rate of $2 interest on $1,000, per day? *A.* No, Sir.

Q. Mr. Brady: Sir? *Witness.* No, Sir.

Q. Was not that the rate of interest to be paid you by Huntington on this loan of $21,000? *Q.* No, Sir.

Q. Did that book show any thing at all in regard to the rate of interest on that loan? *A.* No, Sir.

Q. Was it no part of your motive or object in destroying that book, to cancel the evidence that the loan to Huntington was made at a usurious rate of interest? *A.* No, Sir.

Q. Was it no part of your motive, or object, in destroying that book, to conceal, in fact, that any loan to Huntington was in any possible way to yield you any compensation greater than 7 per cent. per annum?

A. No, Sir.

Q. You now adhere to the statement you made yesterday, that the sole object of destroying that book, was to keep out of your own view the amount of your loan to Huntington? *A.* Yes, Sir.

Q. But I understand it contained no other loans than this?

A. Oh no! I did not say so. It did.

Q. Well, how many more did it contain?

A. I don't know. A number.

Q. Well, how many more did it contain? *A.* I cannot say that.

Q. Why did you not present this check on the 9th of September?

A. I did not want the money.

Q. Well it was a loan expressly for two days?

A. No, Sir; he said he wanted to borrow the money for a *few* days.

Q. I understood you the 9th was put in that check, to show that the loan would be due that day?

A. Yes, Sir; I could have claimed the loan on that day.

Q. I know that, but I want to know whether that was not the agreement?

A. He borrowed the money for a *few* days, I could have claimed the money on the 9th.

Q. I ask you was it not the agreement that that money should be paid on the 9th?

A. He said he borrowed the money for a few days.

Q. I ask you again was it not the agreement that it should be paid on the 9th? *A.* No, there was no agreement.

Q. That was the only motive? *A.* Yes, Sir.

Q. Did you ever present it? *A.* No, Sir.

Q. You never attempted to collect this $21,000?

A. I did not know how I could collect it. I wish I could. (Laughter.)

Q. Well, do you think that an answer to my question?

A. I do—yes, Sir, you asked could I collect it.

Q. Well, I will ask it again to enlighten you. Did you ever attempt to collect that check, or draft for $21,000? *A.* No, Sir.

Q. Did you ever demand it from Huntington? *A.* No, Sir.

Q. Was this check ever presented at the Bank? *A.* No, Sir.

Q. Did you see Huntington between the 6th September and the 9th of October? *A.* Yes, Sir.

Q. Did you speak to him about this loan at all? *A.* No, Sir.

Q. Did you see him in relation to business? *A.* Yes, Sir.

Q. Did you make him any other loan between the 6th September and the 9th of October? *A.* Yes, Sir.

Q. Was it a loan for him, or for others?

A. Sometimes for himself, sometimes for others.

Q. What was the date of the last one? *Witness:* The last loan?

Mr. Brady: Yes.

Mr. Noyes.—I am not disposed to be strict in objections to the admissibility of evidence in reference to the examination as to other subjects subsequent to the 6th September, so far as they may illustrate subjects occurring on the 6th; but I rise to object to going into evidence on any other

transactions than the one in question, unless some very legitimate object may be attained by it. It seems to me not to be within the rule which your Honor has laid down; and if that be observed, it will keep them from roving from the case. I hardly wish to be understood as objecting to the evidence, unless the gentleman proposes to go into all these transactions. If he does, I do object.

Mr. Brady: No—I do not.

The Court: I think I misunderstood the witness when speaking of this check. I understood him at first to say, it was at first drawn "for three days," and then a *few* days.

Witness: No. it was a "few days."

Mr. Noyes: Yes, Sir; it was; the witness referred to the interval between the 6th and the 9th. It was borrowed for a *few* days.

The Court: The check, then, is dated on the 6th?

Witness: Our check was dated on the 6th. Mr. Huntington's was dated on the 9th.

The Court: Of the same month?

Witness: The same month.

Mr. Brady resumed; Was there a Mr. Halsey in any way connected with your business? *A.* He is a clerk of ours.

Q. What is his full name? *A.* Wm. H. Halsey.

Q. Had he any authority to receive interest for you upon loans which you made? *A.* Yes.

Q. What interest? The 7 per cent. you have spoken of?

A. Yes.

Q. Did you receive the principal and your clerk the interest?

A. No, Sir; both together, when the loan was paid.

Q. If Huntington got a loan of $10,000, you or Halsey received both interest and principal together, did you?

A. If it was a loan of $10,000, he made up a statement of the loan and interest at 7 per cent. per annum, and gave me a check for it; and Mr. Halsey had the same right to receive it as myself.

Q. If he happened to be there? *A.* Yes, Sir.

Q. Was there no arrangement by which the principal amount should be paid to you, and the interest to Halsey? *A.* No, Sir.

Mr. Brady: To prevent any misunderstanding of the word interest, I wish to say that when I use it, I mean compensation for the use of money.

Witness: That is interest. You mean the 7 per cent.?

Q. Did you ever direct, or request, or express a wish to any body, that when the loans that you made to Huntington were repaid, the principal amount should be put in an envelope directed to Harbeck & Co., and the amount of compensation, or interest, to be put in another envelope addressed to Mr. Halsey? *A.* No, Sir.

Q. Nothing of that kind ever was done?

Witness was understood to say "No."

Q. Was the interest at 7 per cent. included on the face of the loan?

Witness: At that time?

Mr. Brady: Yes.

Witness: No, Sir.

Q. You took no check or agreement of any kind for that? *A.* No, Sir.

Q. Indeed there was nothing said between you and Huntington of what you would be paid for that? *A.* No, Sir.

Q. Was there any book kept in your establishment during that part of the month of September, 1856, in which any entry was made from which any person could discover what rate of interest you were to receive from Mr. Huntington?

A. Yes, Sir, the Loan Ledger will tell you.

Q. Now, in gross, about what amount of money did you receive from Huntington, for yourself or for Harbeck and Co., between the 6th of September and the 9th of October?

A. I cannot state that.

Q. About? *A.* I cannot say.

Q. Well, at a rough guess? *A,* I could not state—I could not guess.

Q. You can tell whether it was $1,000 or $30,000?

A. It was more than $30,000; perhaps $100,000, perhaps more.

Q. Between the 6th September and the 9th October?

A. I understand the question. You ask me as to the borrowed money, and if he paid me back the gross amount. I could not state that.

Q. And that was wholly irrespective of this loan, which never was called for at all? *A.* It might have been $200,000 for all I know.

Q. What was the reason you never mentioned this loan to Huntington during all that time? *A.* I had no particular reason.

Q. You did not feel as if you wanted the money?

Witness: I have answered that question several times over.

Mr. Brady: No, you did not.

Witness: I beg your pardon.

Mr. Brady: You mentioned something in reference to the $21,000, but not as to the other.

Q. Now, Sir, when did you first hear from any quarter an intimation that either of these papers was a forgery?

A. I heard that the note of Phelps, Dodge & Co., was.

Q. When?

Witness: He was arrested on the 9th, his first arrest. I believe that is the date you fixed on? *Mr. Brady:* Yes.

Witness: On the 10th, I heard from Phelps, Dodge & Co., that that note was a forgery.

Q. At what time in the day?

A. I think it was about 2 or 3 o'clock.

Q. At what place?

A. I think it was at the Tombs, in one of the offices, or rooms there.

Q. You became one of the bail for Huntington; did you not?

A. Yes, Sir.

Q. That was on the first arrest? *A.* Yes, Sir.

Q. Wasn't that the 9th?

A. I believe you fixed on that as the 9th.

Q. The 9th was the first arrest? *A.* Yes, Sir.

Q. You heard of the forgery that day? *A.* Yes, Sir.

Q. What time of the day?

A. I heard of the forgery about 12 o'clock.

The Court: On the 9th? *Witness:* Yes.

The Court: I understood you to say between 2 and 3 o'clock.

Witness: That was on the 10th.

Mr. Brady: What did you hear of the forgery?

A. I heard it was on the two notes of Phelps, Dodge & Co.

Q. What two notes?

A. I don't know. They were not my notes. Two notes belonging to Mr. Belden, I believe.

Q. Did you see the paper alleged to be forged?

A. I did see it up in the Tombs—I think I did.

Mr. Brady: I am speaking of the 9th of September.

Witness: I am speaking of the 9th of October when he was arrested.

Mr. Brady: Well, the 9th of October did you see the paper that day up at the Tombs?

A. I saw it up at the Tombs. I think I did.

Q. Where was it you became bail for him? *A.* At the Tombs.

Q. Who became bail with you? *A.* Charles Belden.

Q. At whose request? *A.* Mr. Belden's request.

Q. At his request you became one of the bail for Huntington?

A. Yes.

Q. Where was that request made? *A.* At the Tombs.

Q. Was that the first place at which you saw Huntington on the 9th of October?

A. No, Sir; I saw him on the 9th of October in Mr. Belden's office.

Q. Was there a conversation there between you and Mr. Belden and Mr. Huntington? *A.* I don't think there was any conversation.

Q. Was there any paper produced at that time, bearing the name or purporting to bear the name, of Phelps, Dodge & Co.?

A. I don't recollect.

Q. Was there at any time during the 9th of October?

A. At the Tombs there was; I think there was.

Q. What was the amount that Huntington was bailed in?

A. $20,000.

Q. After you had entered into recognizance for him as security, did you and Belden and Huntington leave the Tombs together? *A.* Yes, Sir.

Q. How long did Huntington remain in your society after that?

A. He went up street perhaps after half an hour.

Q. Did you see him again that night? *A.* Yes, Sir.

Q. At what time of the night? *A.* About seven o'clock.

Q. Where? *A.* At Mr. Belden's.

Q. How long did you remain there then?

A. I staid there, I suppose, an hour.

Q. Did Mr. Huntington leave with you? No, Sir.

Q. You left him with Mr. Belden? *A.* I left him with Mr. Belden.

Q. Where did you next see Huntington?

A. In the office, next morning.

Q. At what time?

A. I think it was about a quarter past ten; about ten o'clock.

Q. In his office? *A.* No, Sir, in my office.

Q. How long did he remain there at that time?

A. Till about half-past eleven; I am not particular about the moment.

Q. What was he engaged in during that period?

A. He was smoking a cigar; Mr. Platt was drawing up an assignment.

Q. From Mr. Huntington to whom?

A. To Charles Belden & Co., and Harbeck & Co.

Q. Who was the assignee? *A.* Wm. H. Halsey.
Q. An assignment of all his property, preferring whom?
A. Preferring the Beldens and the Harbecks.
Q. That was executed there? *A.* Yes, Sir.
Q. After its execution, what became of Huntington?
A. He went out of the office.
Q. Where did you next see him?
A. I saw him up at the Tombs. *Q.* At what time?
A. About half past two, it might be.
Mr. Brady. That is all.

Direct resumed by Mr. Noyes.

Q. Mr. Harbeck, had your brother any thing to do with making this loan personally? *A.* No, Sir.
Q. Or any communication with Mr. Huntington about it, to your knowledge? *A.* No, Sir.
Q. You mentioned that you knew Huntington was arrested for forging two notes of Phelps, Dodge & Co. *A.* Yes, Sir.
Q. Were these your notes? *A.* No, Sir.
Q. Neither of them was the note mentioned in this indictment?
A. No, Sir.
Q. How soon after learning that he was arrested for forging these two notes, did you learn or suspect that this note and the other notes connected with it, were forgeries?
A. I asked Messrs. Phelps, Dodge & Co. at the Tombs next day at two o'clock.
Q. I don't ask what they said, but how soon did you learn it?
A. Next day at two o'clock.
Q. You had become bail for him, I understood? *A.* Yes, Sir.
Q. The preceding day? *A.* Yes, Sir.
Q. On the 9th? *A.* On the 9th.
Q. At whose request?
A. At Mr. Belden's request. The judge said he would take one name, and Mr. Belden said, "You may take down mine."
Q. Do you know who asked Mr. Belden to be bail? *A.* I cannot say.
Q. Next day then at something like two o'clock, you learned that your own note was a forgery?
A. Yes, Sir; I learned that this note of Phelps, Dodge, & Co. was a forgery.
Q. What did you do?
A. I left the note at the Tombs, with the Police department there, and surrendered my bail-bonds, and had Huntington arrested.
Q. Did Mr. Belden do the same? *A.* Yes, Sir.
Q. And you both surrendered your bail immediately on discovering that your note was a forgery? *A.* Yes, Sir.
Q. I don't know whether you meant to be understood as saying that there is any sign of Leonard & Hoffman, or of Hoffman & Leonard, opposite your office? *A.* I never saw such a sign.
Q. You don't know of there being any such sign or not, though, if you had looked out of your office, if it had been there you would have seen it?
A. Yes, Sir.
Mr. Noyes: That is all, Sir.

James Stokes, examined by Mr. Noyes.

Q. Mr. Stokes, were you of the firm of Phelps, Dodge & Co., in July last? *A.* Yes, Sir.

Q. And for sometime before? *A.* Yes, Sir.

Counsel: Look at that note (the note marked B), and see if that signature is in the handwriting of any member of that firm, or is a mere imitation? *A.* It is an imitation, Sir.

Q. It is not in your handwriting, or in that of any member of the firm?

A. No, Sir; it is an imitation of my signature for the firm.

Q. How does it look like your signature?

A. The size of it is like it; but I cannot tell it otherwise.

Q. Did any member of your firm, to your knowledge, ever authorize any person to sign that?

A. It was never authorized by any member of the firm; nor did any member of the firm ever do it.

Q. It is not one of the transactions of your house? *A.* No, Sir.

Q. Who transacted your custom-house business?

A. I signed the papers at the custom-house.

Q. Where were they generally signed?

A. At the custom-house. The entries are signed at our office; the bonds are signed at the custom-house.

Q. There is a public desk in the custom-house where you sign the papers? *A.* Yes, Sir, the bonds.

Q. In the presence of many people? *A.* Yes, Sir.

Q. How does the character of your signatures there compare with this? (the note marked B)

A. I sign there differently from the signature I put to checks and notes. I sign *these* more carelessly.

Q. How does it compare with this? (the note marked B)

A. It is more like the custom-house signature than our signature to notes and checks.

Q. Your custom-house signature is large and flowing?

A. And careless—intentionally so.

No Cross-Examination.

Charles J. Douglas examined by Mr. Noyes.

Q. Please state of what commercial firm you are a member in this city?

A. Bliss, Briggs & Douglas.

Q. Where is your place of business? *A.* Nos. 5 and 7 Dey street.

Q. What is the business? *A.* Importing and jobbing of dry goods.

Q. Will you state the names of the persons who compose the firm?

A. Wm. M. Bliss, John R. Briggs, Charles J. Douglas, W. A. Wheeler, and Austin H. Kelly.

Q. Will you state whether you know the handwriting of all the members of that firm? *A.* Yes, Sir, I do.

Q. Is any person authorized to sign for the firm but one of its members?

A. No, Sir.

Q. Now look at the signature of that note (a note with the name of that firm, before produced), and state whether it is or is not the handwriting of any member of your house. *A.* It is not, Sir.

Q. Is it any imitation of any ones?

A. Not at all, Sir; the name in one particular is not spelled right. My name is not spelled right there.

Counsel: There are two s's in it there.

Witness: Yes, two s's and there is only one s in my name.

Q. Do you know the defendant, Huntington?

A. I never saw him until this morning.

Q. Did you ever have any transactions with him to your knowledge?

A. Never.

Q. Did you ever know that he had any note of yours?

A. No, Sir; I did not know there was such a man living until this affair came up.

Cross-examined by Mr. Brady.

Q. Did you use any such blank as that for your notes?

A. No, Sir, our blanks are all engraved "payable at the Mercantile Bank."

Q. That was the case in September, 1856?

A. Yes, Sir. We never had but one firm name; it was always the same.

Q. Does that signature bear any resemblance to the signature which would be made by any member of the firm? *A.* Not the least.

Samuel Graydon, examined by Mr. Noyes.

Q. Where is your place of business? *A.* No. 139 Broadway.

Q. What firm? *A.* Graydon, Swanwick & Co.

Q. What is the business? *A.* Importing dry goods.

Q. Do you know J. M. Kingsley?

A. I never heard of him before this transaction.

Q. Look at that draft (which was handed up), and see if you know any thing of it, or of the acceptance written over it?

A. I know nothing about it, except that I saw it at the Police office.

Q. Is that acceptance in the handwriting of any member of your firm?

A. No, Sir.

Q. Or like their handwriting? *A.* No, Sir, nothing like it at all.

Q. Was it made or authorized by your firm, or any member of it to your knowledge?

A. I can recognize, I think, an attempt at an imitation of my brother's signature in it.

Q. Is he one of the firm? *A.* Yes, Sir.

Q. Was it made or authorized by any member of your firm to your knowledge? *A.* No, Sir.

Q. You don't know the drawer at all?

A. No, Sir; I never heard of him before.

Cross-examined by Mr. Brady.

Q. You say you recognize an attempt at imitation of your brother's signature. What is the degree of resemblance?

Q. Chiefly that the S. of Swanwick is made, as my brother makes his.

Q. That is all? *A.* That is all.

Q. In the general effect there is no resemblance whatever, or, if any, it is very slight?

A. It could not possibly deceive me, or I think anybody who had ever seen our signature.

Q. (By Mr. Noyes). Did you ever know Huntington?
A. Never. I never heard of him before this transaction.

George Richmond examined by Mr. Noyes.
Q. Are you connected with any commercial house?
A. Yes, Sir, that of Thomas N. Dale, & Co.
Q. As partner? *A.* Yes, Sir.
Q. Were you so in June last? *A.* Yes, Sir.
Q. Will you state of whom that firm consists?
A. At that time, of Thomas N. Dale and George Richmond; since then, John R. Harris, has been taken in as a partner.
Q. Where is their place of business?
A. At No. 18 Warren street; they are importers of dry goods.
Q. Will you state whether you know the signatures of all the members of the house? *A.* Yes, Sir.
Q. And whether that signature (to the paper handed up), is or is not the signature of any of them?
A. That is not the signature of any of the members of the house.
Q. And was never authorized, to your knowledge, by any of them?
A. No, Sir.
Q. State whether it is an attempt to imitate any of their signatures?
A. It is an attempt to imitate my signature.
Q. How successfully?
A. The D is very good in Dale, very much like mine, and the N also.
Q. Did you know Huntington? *A.* I did not, Sir.
Q. Do you know whether your firm has ever had any thing to do with him?
A. No, Sir; not that I ever heard of.
Q. But the general effect of that signature does resemble the one made by you? *A.* No, Sir, only in those particulars I have spoken of.

Cross-examined by Mr. Brady.

Q. A person acquainted with your mode of writing the signature of that firm of Thomas N. Dale & Co. would see at once that that is a forgery?
A. I think they would, Sir.

John T. Hoffman examined by Mr. Noyes.
Q. State what your profession is? *A.* I am a lawyer.
Q. Of what firm? *A.* Leonard & Hoffman.
Q. Where is your office? *A.* No. 63 Wall street.
Q. Do you know any firm of the name of Hoffman & Leonard?
A. I do not.
Q. Do you know any commercial firm of the name of Hoffman & Leonard? *A.* I know of no such firm.
Q. Will you look at that check (the check before produced), and see whether that is the signature of your firm reversed?
A. It has got the names of both members of our firm, but that is all I can say of it.
Q. Is it the handwriting of Mr. Leonard or yourself? *A.* No, Sir.
Q. Do you know whose it is? *A.* I do not.
Q. Was it ever authorized by you or Mr. Leonard to your knowledge?
A. No, Sir.

Q. Did you ever have any transactions with Huntington of this magnitude? *A.* No, Sir.

Q. Did you ever authorize him to borrow any money upon notes of any sort? *A.* Never.

Q. Had you known him prior to the date of this check, Sept. 5th?

A. Yes, Sir.

Q. For how long? *A.* Several years.

Cross-examined by Mr. Brady.

Q. Did your firm keep a bank account?

A. No, Sir, not in the firm's name.

Q. At this time? *A.* Never.

Q. Does this writing resemble the writing of either Mr. Leonard or yourself?

A. I don't see any resemblance to the handwriting of either of us.

Q. Was there any person, other than Mr. Leonard or yourself, who was authorized to sign your name except on law papers?

A. No, Sir; our firm's name is never used, except in law papers, or in connection with our law business.

Q. It is a partnership purely for legal and professional purposes?

A. Entirely so; it is never used in any pecuniary transactions at all.

Q. Where was your office at that date? *A.* No. 63 Wall Street.

Q. Right opposite to Harbeck's? *A.* Nearly opposite.

Q. Had you a sign up? *A.* I think there is no sign up of the firm; there are, I believe, our individual names.

Q. Did you see Mr. Huntington at that time?

A. I think I had seen him, I cannot say on the sixth, but I had seen him in the fall sometime.

Robert M. Bowyer, examined by Mr. Hall.

Q. You are an officer of police, connected with and detailed at the Chief's office? *A.* I am, Sir.

Q. Do you know Mr. Huntington? *A.* I do.

Q. How long have you known him? *A.* Since the 9th of October.

Q. This last 9th? *A.* That is my first recollection of him.

Q. You were called upon to arrest him, I believe.

A. I was called on in reference to this matter, and took him into custody.

Q. Was it this indictment, or some other matter?

A. It was in reference to two notes of Mr. Belden.

Q. And not of Mr. Harbeck? *A.* No, Sir.

Q. When and where did you make the arrest?

A. I don't think I made the arrest until after we arrived at the Tombs, although I took him from his office.

Q. You first met him where? *A.* At the office of Mr. Belden.

Q. You had not seen him before you saw him at Belden's office?

A. I did not.

Q. Did you or he get there first? *A.* I was there and he came in.

Q. And from that you went with him to the Tombs?

A. To the Chief's office, and from that to the Tombs.

Q. Who went with you down to the Tombs?

A. Mr. Dodge, Mr. Stokes, Mr. Huntington, a man of the name of Fitch, and Mr. Platt, I think.

Q. Mr. Platt was a legal gentleman? *A.* Yes, Sir.

Q. What time of day was that, on the 9th?

A. It was, I think, between twelve and one o'clock when we arrived at the office—the police office of the Tombs.

Q. And Mr. Huntington was bailed, I believe, that day?

A. Yes, Sir, in the afternoon.

Q. Were you called upon again to arrest him?

A. A warrant was issued against him, and I arrested him the next day.

Q. The 10th? *A.* Yes.

Q. At what hour?

A. I think it was somewhere about noon of the next day.

Q. In his office?

A. Yes; the office is over the City Bank, 52 Wall street, I think.

Q. It is on the second ground floor? *A.* The second ground floor.

Q. And you also arrested Barry and took charge of him; and he was, afterwards made a witness? *A.* Yes, Sir, I did.

Q. Did you make an examination into papers and documents found in Huntington's office? *A.* I have made an examination there.

Q. I observed upon some papers which Mr. Barry yesterday was called upon to identify, minutes which you also made?—where did you find these papers?

A. (After examining the papers identified by Mr. Barry), I obtained those papers from this parcel, (which he produced), marked "H. H. Barry, private letters and papers."

Q. Were they sealed or unsealed?

A. They were unsealed. Those papers I received from Mr. Halsey.

Q. Where he obtained them you do not know? *A.* No, Sir.

Mr. Brady: What papers?

Mr. Hall: All the papers including the orders.

Q. What day was it you received these?

A. I think it was the 13th. I have a memorandum (which witness consulted). It was the 12th I think; it was Sunday.

Q. Do you know in whose handwriting the outside memorandum is?

A. I only know it from showing it to Mr. Barry. He said these were his papers.

Q. Have you examined these papers (in the parcel)?

A. Yes, Sir. They are merely private letters.

Cross-examined by Mr. Brady.

Q. On the first arrest of Huntington on the 9th, where was he arrested?

A. I first saw him at the office of Mr. Belden, and accompanied him from there to the Tombs. I did not actually make the arrest until after I had arrived at the Tombs.

Q. When you saw him at Belden's office, who was there besides?

A. Mr. Belden, Mr. Stokes; I think Mr. Dodge, Mr. Charles Belden, and one or two clerks.

Q. I don't ask you what the conversation was, but was there a conversation between Mr. Huntington and any of these gentlemen, before you left Mr. Belden's to go to the police office?

A. Yes, Sir; there was a conversation; there was a conversation between him and Mr. Platt, his counsel. They sent for counsel.

Q. (By Mr. Noyes): Whose counsel?

A. Huntington's counsel; it was recommended that counsel should be called in.

Q. When you got to the police office, what was done there?

A. After arriving at the police office I received the two Phelps, Dodge & Co. notes from Mr. Huntington.

Q. Which two?

A. The first two—one of them for 4,000 and some odd dollars.

Q. You have got a memorandum? *A.* Yes.

Mr. Brady: Look at that, if you please. *Witness:* (Consulting his memorandum-book) One of the notes was for $6,500, dated July 1st, 1856, payable in three months to the Bank of Commerce, signed Phelps, Dodge & Co., and the other note was for $4,916 61, dated New York, January 5th, I believe, 1856, for nine months, payable to "ourselves," signed Phelps, Dodge & Co. These two notes Mr. Huntington delivered to me.

Q. Who was present when he delivered these notes to you?

A. Mr. Platt was.

Q. What did you do with the notes?

A. I submitted them to Mr. Fitch.

Q. And then what did you do with them?

A. Afterwards those notes were given to the magistrate or clerk, and the charge made upon them against Huntington.

Q. Well, he was bailed? *A.* Yes, Sir.

Q. In how much? *A.* I think the bail was $20,000.

Q. By Harbeck & Belden? *A.* Yes, Sir.

Q. Up to that time had you made any examination of his office for papers? *A.* I had not, Sir; I procured his cash box from there.

Q. When was that? *A.* While I had him in custody.

Q. Do you mean before you went from Belden's to the police office?

A. No, Sir. After they brought him to the police office, I sent for his cash box, cash book, any check book, and I examined the cash box in his presence at the office.

Q. Did you get and thing else from his office connected with that first arrest? *A.* No, Sir.

Q. Well, on his being bailed, did you then leave him?

A. He left me. I remained at the office and he went away, I believe.

Q. Where did you next see him?

A. I saw him next in the passage way leading to his office, about noon next day. I went into his office, because he had asked me to go in, and I accompanied him.

Q. Was there anyone with you?

Witness. When I made the arrest?

Mr. Brady. This second time.

Witness. He was talking to a gentleman: there was no person with me, though a person accompanied me.

Q. But none of these parties, Belden or Harbeck, were with you?

A. I think Mr. Dodge came down with me, but I don't think he was present when I arrested him.

Q. When you went into his office what did he do?

A. Nothing, but gave some general directions.

Q. How long did you remain? *A.* But a very few moments.

Q. When you got to the Police Office, on that second occasion, weer either of these parties, Harbeck or Belden, there?

A. I think they were there. Either one of them or both, I am not positive.

Q. How long was it before he was committed then?

A. I cannot say positively—an hour or two,—there was another charge made, and the bail surrendered him.

Q. He has never been bailed since? *A.* I believe not, Sir.

Q. These papers that Halsey gave you—from what part of the office do you suppose he took them?

A. I don't know. I did not see him take them. He brought them to my house on a Sunday.

Q. Did you obtain, at any other time, any other book than those you have mentioned?

A. I obtained some blank books, forms of notes in books, and some notes in sheets. *Q.* Any other book?

A. No, Sir; I have no recollection that I did. There was a small black memorandum book that I gave the counsel (Mr. Bryan), with the consent of the District Attorney.

Q. Was there another memorandum book besides that one you gave counsel? *A.* No, Sir; I have no recollection of it.

Q. One a little thicker?

A. No, Sir; I don't recollect seeing a book of the kind. I have been asked about it before.

The Witness withdrew.

Mr. Knapp was then called, but did not answer.

The District Attorney then rose and said: We now formally offer and put in evidence, though, I believe, one or two of them have already been read in evidence, the memoranda identified by Barry, the check of Hoffman & Leonard, of Harbeck & Co., and of Chas. B. Huntington, and the four collaterals which have been identified and sworn to. We ask the court to reserve to us the right in regard to Knapp's collateral. We wish to examine him as to that single point, he himself being out of town and some difficulty being experienced in finding persons acquainted with his signature; and we also introduce the envelope, and submit the whole to the Jury.

Mr. Brady: For what purpose do you offer these other papers?

District Attorney: We propose to put in the four collaterals as part of the whole transaction, and to ask the Jury to infer hereafter a guilty knowledge on the part of Mr. Huntington, on the ground, with which some of us here are familiar, of cotemporaneous forgeries,—a doctrine that is sometimes doubted. Your Honor will observe that these collaterals are not the subject of any other indictment, which is the only restriction I have been able to find, and therefore I offer those in evidence.

Mr. Brady: As part of the *res gestæ*?

Mr. Hall: As part of the *res gestæ.*

Mr. Brady: And what others?

Mr. Hall: And these memoranda being the memoranda in Huntington's writing given to Barry, and, above all, the memorandum marked A, comprising some memoranda regarding the exact description of this note on the ground that it goes to show, as we contend, Huntington's authority in regard to the manufacture of these notes down to the signatures, leaving

the Jury to infer from the uttering by whom the signature was made. And the envelope—I don't know that that is particularly important. That is I understand from Mr. Stoughtenberg's evidence that it was part of the transaction—a memorandum made at the time Huntington was in the office, at the time it was made.

Mr. Brady: And the other notes which were proved to be forgeries?

Mr. Hall: Yes, (except Knapp's) as cotemporaneous forgeries, and as part of the *res gestæ* of this loan. I also propose to read Mr. Huntington's legal examination on this particular charge.

Mr. Brady: Will you inform me under which section of the statute this indictment is found?

Mr. Hall: Under §33 of 2 R. S. 3d edn. 760.

Mr. Brady: I have something to say about that. I understand, then, the 33d section of this statute to be that under which this indictment is brought. It is this: "Every person who, with intent to injure or defraud, shall falsely make, alter, forge, or counterfeit any instrument or writing, &c.

* * * * * * * *

Any instrument or writing, being, or purporting to be, the act of another, by which any pecuniary demand or obligation shall be or shall purport to be created, increased, discharged, or diminished, or by which any rights or property whatever shall be, or purport to be, transferred, conveyed, discharged, diminished, or in any manner affected, the punishment of which is not hereinbefore described.

"By which false making, forging, altering, or counterfeiting, any person may be affected, bound, or in any way injured in his person or property, upon conviction thereof shall be adjudged guilty of forgery in the third degree."

Without stopping now to discuss any of the questions which are hereafter to be presented on the true meaning and legal effect of this section, I propose, at present, simply to state what I understand to be the theory of this prosecution in reference to this particular charge; and then to make very briefly an objection to some of the proofs now proposed.

It is alleged, in the first count of the indictment here, that Huntington forged this note of Phelps, Dodge & Co., purporting to be payable to their own order, with intent to defraud Wm. H. Harbeck and divers other persons to the jury unknown. There is no other intent alleged in the indictment, either in this count or in the second count, and the indictment contains no statement that this instrument has been endorsed in any way whatever.

Now, I object to the introduction of these instruments,—in the first place to the particular note first introduced which is said to be a forgery, on the ground that it is different from the note set out in each count in the indictment. That note is an instrument purporting to be endorsed, whereas the one set out in the indictment does not purport to be endorsed; and the court will perceive that that makes a most material difference, because, if this proof be admitted, we shall presently contend, or at all events we will contend at what may be the proper stage of this controversy, that the indictment is bad in substance, and no judgment can ever be rendered upon it, because it not only does not appear from the face of that indictment that anybody could be injured by reason of the uttering of the note mentioned in it, but it affirmatively and distinctly appears in it, that no person could by any possibility be injured by it, and for this reason: If I

take a promissory note, drawn by one of the gentlemen whose name is said to be forged, payable to his own order, and not endorsed by him, I apprehend that it is a legal impossibility for me to perpetrate a forgery by uttering that instrument; and for the reason that it is not only necessary that the instrument should be forged, but also that there should be an attempt, by altering it, or making it, to injure or defraud somebody; and more than that, it is necessary, by the express language of the statute, embodying in that particular a phrase and expression of the common law, that by such false making or forging, some person may be affected, bound, or in some way injured in his person or property, which certainly is not the case, as I shall contend, upon an instrument of Phelps, Dodge, & Co., payable to their own order, and never endorsed by them. And why? Because no action could be maintained against them, without an endorsement, and in no way possible upon that paper; and it does not appear in the indictment, that it ever was endorsed by them. When the paper comes to be produced, a very different state of affairs comes up, for there the endorsement of Phelps, Dodge, & Co., or what purports to be their endorsement, appears on it. I don't intend to enter into the discussion of that question now, I shall do so at the proper time, when the District Attorney has closed his case. I simply object to it now, because it is a different thing, in its legal object, and its whole character from the thing described in the indictment. It has long been a recognized principle of business men, of social custom, of general law, that a man's note payable to himself or order, and not endorsed by him, is a mere piece of blank paper, which if carried into possession of anybody, gives no right, creates no liability. It is an inchoate thing in law, a thing by which no liability is created; and that is the only thing in this indictment. So I object to that paper. (The note marked B.)

Mr. Noyes: You object to the note?

Mr. Brady: Yes, to the note. I admit that contemporaneous forgeries proved to have been committed by a man charged with a particular act of that character, according to the authorities may be given in evidence for one purpose, and that only, viz. to show the intent of the utterer or the intent of the maker, just as in an indictment for receiving stolen property, you may show that the accused, about the time of the commission of the act for which he is tried, or within a period so near as not to do injustice to the party, received other stolen property. It establishes what we call *scientia*, the guilty knowledge; and even so in a civil action, as we all know, and such was decided in the case of *Carey* vs. *Kotleigh*, where the allegation was, that a party obtained property by means of fraud from another, other transactions on his part, about the same time, though with other persons, were received in evidence, as going to prove the intent of the accused in the commission of the specific act with which he was charged. But if this proposed evidence of the note was admissible notwithstanding this objection for variance which I now urge, then these might be received as evidence of intent, not being the subject of separate indictments. But that possibility, in my view of the matter, depends on the other question, whether the first paper is to be received at all; for if it be not, then there is an end to this case.

The other papers, that is, the other checks, I do not object to, except as subject to the same point I make now.

As to these papers, the orders proven to have been sent to Barry,—I

Hon. J. Hall

claim that they are not admissible in evidence, for these reasons: They relate to other forgeries, or alleged forgeries, which are the subjects of existing indictments against the accused; and I claim the law to be, although there is a difference of opinion on that subject, that other forgeries, if they prove to be such, which are included in other indictments, cannot be received for any purpose in reference to some one which is being investigated on a trial. That is the first objection.

In the second place, I say that there is no inference legally warrantable from the fact that he directed their notes to be filled up in the manner described here, that they are any of the instruments which have been produced on the trial.

It is true that the witness Barry thinks that it is in his handwriting, that is, the handwriting of the body of the note which is the subject of this indictment, and so far as that goes, it is admissible to show that he filled that up at the request of Mr. Huntington; but of the signing of it, it will be no evidence at all; that is only to be inferred from the uttering of it. And besides, it is to be remembered that any thing that would tend to show a habit of forging, would not be admissible to establish the guilt of the accused on a particular charge. These are our objections.

The District Attorney, claimed that he had, in framing the indictment, purposely omitted reciting the endorsement on the note; for in doing so he would have left the count open to the objection of duplicity, or double pleading, in setting up two distinct and separate transactions. The making out of the note was a distinct and complete transaction, and the endorsing of it another, and had he included both, the learned counsel for the defence would have contended that the count of the indictment was void, by reason of duplicity. It had been decided that the endorsement was no part of the note, and might of itself, if a forgery, be made a separate cause of indictment. There were many cases in the books where a note being made by a man to his own order, passed to a party for value, and afterwards for some reason the drawer of the note refused to endorse it, the court compelled its endorsement. Also where one member of a firm draws on the firm, the act of drawing is considered an acceptance. Therefore the note on its face was such as if genuine, was complete. In regard to the objection to the notes, as being collateral, he should say nothing; because those notes were part of the *res gestæ*, and they had a right to offer them to the jury even if the court struck out all in reference to their being forgeries. If the counsel for the defence could show that those other notes, offered as collateral, were genuine, then there would be a presumption that the defendant had come by the particular one set out in the indictment in the natural course of his business as a broker; but the prosecution had shown that every one of those, from the first to the last, was a forgery, and it was all one transaction. They were strong presumptive proof of guilty knowledge on the part of the defendant, for the probability that the defendant knew them to be forgeries increased with each one which he passed. There was a third objection to the admission of papers coupled with that package. Being acts directly traced to the defendant, he contended they were competent evidence, as connected with the particular matter in issue. He cited the case of *Comm.* v. *Dexter*, in Mass. R.

Mr. Noyes: I am quite unwilling to occupy the time of this Court on a question which seems to me to admit of no great doubt; but, inasmuch, as the question of the inadmissibility of the note is vital, if it prevail, your

Honor will allow me to consider that question. The question presents itself in this shape: Is it essential in framing a count upon a forged note, payable to the order of the maker, or to the order of a third person, where the endorsement is or is not forged, to set out the forgery of the endorsement, or its genuineness, as the case might be? Now, as my learned friend the District Attorney has suggested, the law is familiar to all, that a promissory note is a distinct instrument by itself, and the endorsement is also a distinct instrument. It is so in reference to a bill of exchange and the endorsement of a bill of exchange. If, then, in your indictment you were to count upon the original note and upon the endorsement, you would run in the teeth of a rule of law, making your count bad because of duplicity. It is perfectly clear, that, as matter of pleading, you may not, without offending a fundamental rule, count upon two offenses upon the same count in an indictment. In this case, the District Attorney has properly prepared the indictment on this note, marked B; it was unnecessary for him to take any notice of the endorsement at all, unless he did it in a new count alleging the forgery of the endorsement, which would be a distinct offense.

A single word as to the character of a note payable to the party's own order. That does not need an endorsement for the purpose of making it effectual; because if the maker passes it off for value, without putting his endorsement upon it, to make it technically negotiable, the holder has a right to compel him to put that endorsement upon it; or he may count upon the special circumstances, upon the whole *bona fides* of the transaction, claiming the right to recover against him as the maker of the note which he has transferred. The books are full of cases upon that subject. It is, then, just as much a forgery to attempt to pass off a note upon which the party has no direct legal remedy, as it is to put off one upon which a direct remedy may be had against the endorser. The intention is not in the slightest degree changed, and no less offense is committed because the remedy would be in equity in the one case and in law in the other. The District Attorney has referred to a case in Mass. R. I refer, also, to the case of *Rex* v. *Wilks*, Russell & Ry. p. 149, before Baron Wood. This was a bill of exchange, "two months after date pay to our order," which the defendant carried to the house of Stevens & Stevens. The bill was paid, deducting discount, and the party endorsed it, but not in his own name. After he was gone, the clerk discovered that there was no endorsement of the person to whom the note was payable. Counsel for the defendant contended that there could be no intent to defraud, as there was no endorsement on the note; but the court ruled that if there was an intent to defraud, the crime was complete, and the jury convicted him. On an appeal, all the judges, with the exception of Bailey, concurred in saying that the conviction was right.

It is not at all necessary that you should set out that which is a distinct instrument; if it be a forged paper by which a party, if genuine, might be defrauded—if it be an instrument likely to obtain credit, then it is a forgery. It is not necessary at all, in cases of this kind, that any one should be actually defrauded. The law punishes the criminal intent in making and uttering an instrument which is untrue, and which is calculated to deceive. And it is for this reason that, if counterfeit notes be passed at a gaming table, a man may be convicted of forgery although the whole transaction is illegal.

I have a word to say with regard to the admissibility of the notes delivered to Mr. Harbeck, contemporaneously with the note on which the indictment is founded. They are a part of the transaction. He obtained credit on this note, and on five other papers. It was all one transaction; and for the purpose of ascertaining what the intent was in reference to the note alleged in the indictment, we have a right to have all the matters here. It is undisputed that, in cases for counterfeiting, you may give in evidence contemporaneous acts, showing the intent of the party from having passed off counterfeit paper of the same general description. So, in regard to false pretenses,—you may show that the party has made similar false pretenses at the same time. No matter, if it exists in cases where there are no indictments based upon those other forgeries, the evidence may be admitted; and there are a great many cases, even where indictments are found upon the passing of counterfeit coin, where the evidence can be admitted, to prove guilty knowledge.

Upon both grounds, therefore, so far as that question is concerned, there can be no doubt of the admissibility of this evidence. The rule of law is settled in Missouri, Ohio, South-Carolina, Virginia, Maine, in England, and several other places. Clearly there can be no doubt where the papers are in reference to the same transaction, and the intent is to be ascertained in connection with the intent, in regard to notes passed identically with it.

Now, a single word in reference to the admissibility of *those* papers. We have in evidence here a note, answering the description contained in this memorandum,—a note for $6,500, at four months, dated July 1st, and we prove a connection with the time that this memorandum was delivered to Barry, about the 1st of July, 1856. We have an identity between this memorandum and the note upon which the indictment was framed, proved beyond all possible question by a clause in the memorandum itself, each being identical with the other. The memorandum has the words: "Value received of the Minnesota Mining Co.," precisely the language of the note. We have an identity in another way. "We promise to pay to our own order." We have instructions by Mr. Huntington to his brother-in-law, sitting in his solitary office, corner of Wall and Hanover streets, to prepare the identical note in question, and I understand the objection to be that we have not a right to give in evidence the instructions given by the person charged with forging the note, for the making of it. Is it possible that where the law punishes nothing but the guilty intention, and when we wish to establish that the defendant, a broker, had forged notes in his possession, not coming to him in the way of his business—he not telling us where he got them,—that we may not, for the purpose of rebutting the presumption that he might have procured them in the way of business, not being aware of their character,—that we may not rebut that presumption, by showing that he gave instructions to manufacture this forged paper?

If I am right in this, as I think I must be, then in reference to the other matters. Here are other instructions agreeing with the notes given in evidence, and they are all competent to show that, under the guise of a note-broker who might have notes to dispose of for others, he was carrying on another business—he was doing that which might end in forgery, because he was asking his brother-in-law (who probably wrote better than himself) to make notes out of his regular business, which might be forged by the addition of an untrue signature. And although your Honor is not to

pass upon the effect of this evidence, we offer it for the legitimate consideration of the Jury, who are to pass on the question of intent to defraud.

These are my views in relation to this question; and I beg to say that so far as I am connected with this prosecution, I have no desire at all, and I should regret if any thing I have said had the effect to press this matter unduly against the defendant. If, therefore, there should be any considerable doubt on the subject, it would be my own wish that the evidence should not be admitted. I say this because,—standing here on behalf of the prosecution.—I should not have the same amount of zeal against the defendant, that I might be justified in entertaining in a civil case, where the consequences would be less serious. I have submitted these views, supposing them to be entirely correct. It does seem to me that we have a right to give evidence of contemporaneous transactions, for the purpose of enabling the jury to judge as to the question of intent, and as to the question of guilty knowledge, without which the defendant cannot be convicted.

Mr. Brady: I apprehend, if your Honor please, that a great and grave question to be considered now arises upon the particular paper which is the subject of this indictment. I objected to the others, and endeavored to state very briefly the rules of law applicable to them. My learned opponents have given their answer, and in reference to the other papers I shall say nothing further; but I shall be understood by your Honor as objecting to every other paper, but the one which is the subject of this indictment, and if admitted, my objection will be single as to each, that no question may arise at any other stage. But, after all, the question whether they are admissible is dependent upon whether the particular paper on which this indictment alone reposes, can be admitted. I do not know whether I have been successful in making your Honor understand me. My learned friends do not seem to understand, that my point at present is simply in regard to the question of variance between the indictment and the proof offered. I said, and intend to be understood, that if your Honor should say that this proof is admissible, I would hereafter contend that this indictment was in such a form that no conviction could be rendered upon it, with all the proof that you may rule admissible. But the discussion has assumed such a shape, as to draw within it a question intended by me to be kept away for the present—that is, whether any thing set out in this indictment, in regard to the drawing and issuing of this note, can warrant a conviction. My learned friend says that he has no desire to have any point pressed against the accused unduly. That was hardly necessary for him to say; and although he has not alluded to it, I grant the same for the learned District Attorney. I submit that it is the most unwise proceeding in the world, in any criminal case, if an objection be taken, though technical, and it appears to be well founded in law, to postpone the discussion of it. I do not know that your Honor has ever done so; and in my practice before you, I never knew you to avoid any responsibility.

I think here is a question which lies at the foundation of this whole prosecution, and one thing is clear, that it has not escaped the attention of the prosecution; for my learned friend, with an industry for which he is remarkable, has brought together authorities to support his views, showing that he has examined this matter. The District Attorney says, the indictment was drawn as it is, in order to avoid another difficulty, which I do not appreciate, and which I certainly should not raise. Now, there is a good reason,

why, my friends need not be over nice upon this question. Huntington has been indicted twenty-seven times over, and they may, if they think fit, put him to twenty-seven trials. If it turn out that this indictment is one on which he is not fairly guilty, there is a *corps de reserve* by which he may be chased up. And not only the District Attorney, but private counsel are lending all proper zeal to produce a conviction on this indictment, the object of their special choice—so much so, that they would not let us take up another where we conceived that we might have gone into the whole merits of the controversy.

Here is a variance, that the indictment sets out a note drawn by Phelps, Dodge & Co., to their own order, not endorsed by them, nor purporting, nor alleged to be endorsed by them, and that is all we find in the indictment. The paper offered is a note drawn by Phelps, Dodge & Co. to their own order, and purporting to be endorsed by them. Now, that is a variance. In *Barbour's Criminal Treatise*, p. 333, he says that when a criminal instrument forms a part of the offense charged, it must be set out *verbatim*, except where the statute declares that it shall not be necessary; and, again, at page 121, he says, "It is essentially necessary that every indictment or complaint for forgery should set forth the instrument charged as fictitious, in words and figures, if in the possession of the magistrate or prosecutor, in order that the court or magistrate may be able to judge from the record whether it is a document in respect of which forgery can be committed." We have here the law very specifically, that you must set out the instrument precisely as it is, and if there be any mistake the variance will be fatal.* The indictment alleges that Huntington forged a certain promissory note, "which is as follows," and sets out the face of the note, without any indorsement—a note of Phelps, Dodge & Co. to their own order, not purporting to have any indorsement,—and the note they propose to offer is at variance with it, for it purports to be endorsed. To meet this the learned District Attorney says, it is difficult to tell what the law is now. That may be in some cases; but there is no difficulty in arriving at it in this case. The case of the *Commonwealth vs. Dexter*, is one for which I do not contend at all. The logic of it is contained in three lines by the court: "An indictment for forging a promissory note need not allege the endorsement, though it be forged, because it is no part of the note." * * * "The endorsement (says the court) is no part of the note,—the act being presumed to be done after the note is completed, it need not be set out in the indictment." I do not know what the Chief Justice means by "the endorsement being after the note was completed,"—but in judgment of law the endorsing of a note is contemporaneous with the making of it. The case in England was one in which Wilks was charged with forging a bill of exchange, drawn by Rivington & Co., not accepted and not endorsed; and he obtained the money. The accusation was, that it was uttered by the prisoner with the

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* See the State *vs.* Potts, 4 Halst. R. 26; State *vs.* Parker, 1 Chip. 298; United States *vs.* Britton, 2 Mason, 464; Dana *vs.* State, 2 Ohio, 91; the State *vs.* Dourden, 2 Dev. 443; State *vs.* Jones, 1 McMullan, 236; State *vs.* Bonney, 34 Maine Rep. 223; Comm. *vs.* Adams, 7 Met. 5; People *vs.* Badgley, 16 Wend. 53; Harris *vs.* People, 9 Barb. 664; Comm. *vs.* Bailey, 1 Mass. Term R. 62; Comm. *vs.* Stevens, 1 Mass. 203; Hooper *vs.* State, 8 Humph. R. 93; Fogg *vs.* State, 9 Yerg. 392; Comm. *vs.* Houghton, 8 Mass. 107; the State *vs.* Hanseal, 2 Brev. 219.

intent to defraud, and the court held the conviction to be right, under English law and English statutes. But I claim that under the law as settled in this and other States, if the instrument set out in an indictment be one which could not be enforced as it stands, there can be no conviction for forgery.

But what are you to do with the question of *variance?* In the English and Massachusetts cases no question of variance is mooted. I present the question of variance; and say you have indicted us on a paper drawn by a man to his own order, and not purporting to be endorsed by him, while you offer in evidence a note purporting to be indorsed by him, which is a different instrument. Why, says the District Attorney, the making of a note and the endorsing of it, are two separate acts. Why, Sir, is a note, made payable by me, to my own order, and not endorsed by me, of any legal utility? If I take a note of one of the Jurors, payable to his own order, not endorsed by him, and I bring it to you, nothing appearing except that I have possession of it, what right have you against him? You could not sue him on that; certainly not. Can you compel him to put his name on the back of that note? That depends on a variety of circumstances. You cannot, unless he has received value, and certainly he has not, if his name is forged. I refer your Honor to *Barbour's Criminal Law*, p. 117, to show that it has been decided in this State, "that forging an instrument which on the face of the indictment appears to be void if genuine, is not an indictable offense." A man cannot be found guilty of forgery in constructing a paper purporting to pay money, on which money could not be obtained, or which could not be enforced in a court of justice.

I also refer your Honor to the case of *The People* vs. *Harrison* (8 Barb. S. C. R. 560). There the forged instrument was a certificate of acknowledgment to a conveyance of real estate. It certified that the grantor was known to the commissioner whose name was affixed to the certificate, and that the grantor "executed the said deed as his voluntary act for the uses and purposes therein expressed." And the court held, inasmuch as the certificate did not follow the language of the statute, and state in so many words that the grantor *acknowledged the execution of the conveyance*, it was not a valid instrument *if genuine;* and that therefore an indictment for forgery could not be predicated upon it. In that case the court also says, "It is not the falsity of the writing alone, but also its supposed fraudulent effect, which makes a forgery criminal. If the forged instrument is so obviously defective in its form as this is, the law will not presume that it can accomplish the fraud which is perhaps intended. The law presumes a competent knowledge to guard against any such effect, and that no person can be injured thereby in his rights or property." I also refer your Honor to the case of *The People* vs. *Shall* (9 Cowen 778). There the forgery was of a writing purporting to be a promise to pay a sum of money in labor, *expressing no consideration;* and the court held that it was not an indictable crime.*

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* There are a number of other cases sustaining the same doctrine. See the case of *Galloway*, 17 Wend. 542, in which the court held that if a husband affixed the signature of his wife to a deed without authority, and the deed was not accompanied with a proper *acknowledgment*, he could not be convicted of the offense of forgery, because the deed was invalid for want of the acknowledgment. In 2 East's P. C. 883, a person was indicted for forging a bank-note; and because it

I mean to contend that, under our statutes, there must be an actual injury to warrant a conviction; but one thing is perfectly clear, that every book relating to criminal law declares, that the instrument, as it appears on the face of the indictment, must be such a one as, if genuine, would have created a liability—it must be such a one as, if genuine, would have injured in person or property, him whose name is forged. If I read this indictment right, it says that a man forged an instrument, and sets it out; and it appears on the face of the instrument, that no person is held liable on it. Now, who could be convicted on that? The element is wanting to show that some person would be injured by it, and would be liable if the instrument were genuine. A multitude, no doubt, of the learned gentleman's clients—the people—would be perfectly satisfied to have a victim occasionally, though obtained at a sacrifice of the law; and you hear respectable-looking men say in regard to a man charged with crime: "Well, it does not make any difference, such men ought to be convicted anyhow!" But the legislature, and wise and just men say, that the right to punish a man in a state of society where law prevails, is dependent on two conditions: First, you must prove that a crime has been committed; and second, you must prove that the defendant committed it; and this must be done according to the law of the land. I have referred to some cases in which parties have been convicted and afterwards discharged by the law. There is the case where a man forged an acknowledgment to a deed, and because he did not know enough to make it technically correct, but blundered in the execution of the crime, he was discharged. My learned friend says that passing money at a gaming table which is counterfeit, has been held to be the subject of an indictment. I should like to see the case.

Mr. Noyes: It is in Thacher.*

Mr. Brady: The case in Thacher is simply this: A man had a note purporting to be of the United States Bank, and he had it *changed* at a gaming-table; but it was not used in gambling. But I need not waste time upon that, for the reason that in our State a distinction is taken between a thing voidable and a thing void.

Now, Sir, there is a way of providing for the difficulty I refer to. If there were no indorsement on this note, they could have averred some extrinsic damage, or have shown how this instrument might act to the prejudice of Phelps, Dodge, & Co. This question was considered in the case, *The People* vs. *Rathbun* (21 Wend. 509), and it was there said that an indictment is good, if in it be set forth the instrument alleged to have been made, with the intent to injure some person, provided the instrument

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wanted certain statutory requisites to render it apparently valid, it was held that the indictment could not be sustained. So also in *Moffat's Case*, ibid, 954, the conviction was for uttering as true a forged acceptance, on a bill of exchange void by the statute; and it was held that the conviction was wrong. In *Wall's Case*, ibid. 953, he was indicted for the forgery of a will attested by only two witnesses when the statute required three to make it valid, and he was acquitted of the alleged crime on that ground. *See* also *State* vs. *Smith*, 8 Yerg. 150; *Fergus* vs. *State*, 6 ibid. 345; *Tait* vs. *State*, 3 ibid. 449; *State* vs. *Gherkin*, 7 Iredell's Repts. 206; *State* vs. *Shawley*, 5 Hayw. 256; *Williams* vs. *State*, 9 Humph. 80; *State* vs. *Humph.* 10 ibid. 442.

* *Commonwealth vs. Woodbury.*—Thacher's Crim. Cases, p. 47.

be such, on its face, as to show that the rights of such person or corporation might be affected, if the instrument were genuine. That is the law; and I understand the result of it all to be this: if you do not show on the face of your indictment, either by setting out the instrument, or by averring the extrinsic facts, that this instrument would of itself prejudice some person, as matter of law, then you have not an indictment under which a forgery can be shown at all.

Such are the views we have on this matter, and they bear directly on this question of variance, which I now submit to your Honor's examination.

The Court: The first point taken is, that the note, as proved, is at variance with that set out in the indictment. Now I have always understood, in the making of a note, that the note itself, and the indorsement were two contracts; and if the note without the indorsement, is a good and valid instrument, setting out that would be setting out the instrument. It would not be necessary, in setting out the note, to set out the indorsement; and, if the note be good, setting it out without the endorsement is sufficient, in an indictment for forging the maker's name. This brings us to the question whether a note, payable to the order of the makers, and unindorsed by them, is a good and valid instrument in the hands of indorsees. There must be a payee to the note, as well as a payer, and if this had been payable to A. B., or to bearer, no doubt the note would have been good and perfect, and could have been sued without indorsement. Whether a note payable to "our own order," has really a payee upon it, is a question which I have considered. I had a case in which the Herkimer Co. Bank brought an action against a Mr. Durkee, on a bill indorsed by my present partner, and a Mr. T. I was employed for the defendant, and observing that the note was not indorsed by Mr. Durkee, though payable to his own order, I was quite certain of raising a good objection on that point. The Circuit Judge decided, that under the circumstances (Durkee having lodged the note in the bank to take up others), a recovery could not be had against the other parties, the indorsers, but it could against Mr. Durkee. It was not necessary, said the judge, to have an indorsement on the back of a note—an indorsement on its face would answer, and why not the name of the drawer at the bottom, between the original parties to the transaction. The judge put it on the ground that legally it was indorsed as between those parties. That case was not carried up, having been arranged by negotiation. Still, it seems to me, that inasmuch as the prisoner makes this note and negotiates it, (and we will assume it good for the purpose of ascertaining whether there is a variance or not)—that the note would be a good note, if genuine, and there would be no necessity to put the indorsement upon it. If so, it is a perfect instrument as between the parties between whom the transaction took place, and there could not be a variance. Now the case in England, cited, was very much like this. It was a note payable to the order of the maker, actually indorsed by other parties, and did not have the maker's indorsement, and the indictment did not set forth the fact that it was endorsed by other parties; yet the court decided that the indictment was good. The court went on the ground that the note and the indorsement were two different contracts, and it was only necessary to set out the contract. However inclined I feel to make a decision in favor of the defendant in a doubtful case, yet, from my own view of the effect of the paper without that indorsement, I should not feel it my duty to arrest the trial at this stage on that ground.

Then as respects the other papers, it seems to me that all the transactions which surround the particular one are proper to be shown, as going to show that the defendant wrote the name of Phelps, Dodge & Co. to this paper. It is one transaction consisting of many, all with one object, to get the money on this paper. Now, these memoranda of instructions given to the clerk, are proper evidence which the Jury have a right to see, in making up their minds upon the *intention* of the defendant in making this paper. Any evidence which forms a part of this whole transaction is proper to be given to the Jury, to enable them to make up their minds upon the point whether the defendant wrote the name of Phelps, Dodge & Co. to this note. That he had the paper and uttered it, is in evidence. That he gave instructions to his clerk to fill up the body of certain papers is also in evidence, and on this the Jury may place more or less force: first, on the question whether he actually signed it; and secondly, with what motive; whether he intended to defraud some one or not. These are the particular elements of the charge. If there were any papers which would go to show that the defendant did not sign those names, any such paper would be proper to be given in evidence to rebut the charge against him. If so, then any papers that may tend to prove that he did, are, within the same rule, admissible. Therefore I ought to admit every circumstance which bears directly upon the making of this paper, or the intent with which it was made; and it seems to me that all those papers bear directly upon that question, and are therefore admissible.

Mr Brady: Your Honor overrules our objections to the admission of the testimony, and we except in each and every case.

The District Attorney: Your Honor will note that these papers are now fully received in evidence. With the exception of Mr. Knapp, or some one to prove his handwriting, we rest the case for the prosecution.

Mr. Brady: The prosecution having rested, I now make the proposition which I have argued, in the shape of a suggestion, that the case should be dismissed. That your Honor will deny, and then I have a new point—another question of variance, which I take to be perfectly fatal, and that is a variance between the indictment and the proof. The indictment alleges, in both counts, that the intent was to defraud William H. Harbeck (alone) *and* divers other persons to the jurors unknown. The proof is that Mr. Harbeck and his partner, constituting the firm of Harbeck and Co. were the persons to whom this paper was passed, and to defraud whom it was passed, if to defraud any one. I now refer to *Barbour's Crim. Treatise*, p. 397, to show that a variance between the proof and the indictment in the real name of the prisoner or of a third party is fatal, unless the name can be rejected as surplusage. "If a party be described as a person to the jurors unknown, and it appear that, at the time of the finding of the bill, his name was known to them, the prisoner will be acquitted."

The Court: I would suggest, it would seem to me that if he had a partner, and they were both defrauded, that would not affect the fact that he was defrauded himself.

Mr. Brady: Further, the proof of the fraudulent intent must tally with the averment in the indictment,* otherwise the prisoner will be entitled to

* Barb. Crim. Law, 127: 2 East's P. C. 988: Fraud and Deceit are the chief ingredients of forgery, whether by statute or at common law. *Comm. vs. Chandler*, Crim.

an acquittal. Now in reference to your Honor's suggestion, the trouble is this; they have laid the count *conjunctively*, and they have laid it with intent to defraud Harbeck *and* some persons to the Jurors unknown. Now by the proof it appears that the intent was not to defraud Wm. H. Harbeck and certain persons to the Jurors unknown, because the intent (if any there was) was to defraud Wm. H. Harbeck and a person known at the time the indictment was formed.

The District Attorney: Long before either the learned gentleman or myself was born, this matter was fully discussed, in the case of the *People vs. Curling*, in 1 John. R., 320, where the prisoner was convicted of forgery in the Court of Oyer and Terminer. [Case cited at length.] It is only necessary for me to state that in order to set up an intent to defraud, it is not necessary to set out every name—the intent to defraud any one person is sufficient.

Mr. Noyes: I would not trespass on the Court, if your Honor please, but I am apprehensive my learned friend will suggest that we have not met the question. If I understand his proposition, it is this, that although it might be proper to give the name simply of one of the persons to be defrauded, in the indictment, yet it is improper to do so when you connect that name in the conjunctive with the names of others to the jurors unknown. Now, I think your Honor will find that in all pleadings of indictments there is that general clause. You put in the names of all the persons that were known to be intended to be defrauded, and then you add "and other persons to the jurors unknown," because of the general intent to defraud evinced by the forgery. It is not necessary to state the names of all the persons defrauded. In the case cited by the District Attorney the names of two partners were omitted in one count, and of one in another count, and yet it was held that the indictment was good. I refer to the case of the *Queen* vs. *Hanson*, referred to in 5th Harrison's Digest, p. 452, to show that the intent to defraud may be laid as to one partner with whom the dealings were conducted exclusively. Now unless the adding of the phrase in the conjunctive "and other persons to the jurors unknown," make a difference, there is nothing in the objection.

A single word as to my reason for being prepared. In the first place I have not recently been connected with criminal law, and I thought it right, having been engaged in this case, to brush up a little. But another and greater reason is, that I was casting about to see what possible defence could be shown, which the ingenuity of one so talented as the learned counsel for the prisoner could devise; and in investigating the bearings of such questions as might arise, I found that all those questions as to technical objections were settled.

Mr. Brady: If my learned friends have succeeded in defending themselves against the charge of being prepared, I am satisfied, but they have not succeeded in meeting the objection that I made. I object that they

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Cases 189; and if the intent is not averred, the indictment is bad; *Comm. vs. Goodenough, Ib.* 132 and *Comm. vs. Whitney, Ib.* 588; 3 Chit. Crim. Law, 1039 a; and the *intent to defraud* is a question for the jury, Barb. Crim. Law, 115; *R. vs. Birkett*, Russ. & Ry. 86. See also 3 Greenlf. Ev. §§ 13. 14. 15. 17. 18; Ibid. § 103 and notes, Wharton's Crim. Law, 403; Roscoe's Crim. Evidence, 399, 400, American edition of 1836; *People vs. Rathbun*, 21 Wend. 523.

have set out *too many* persons as intended to be defrauded, and they answer by showing that there is no objection to setting out too few persons. I say the defect is that they allege the intent to defraud Wm. H. Harbeck, *and* others to the Jurors unknown, when the proof is that the defendant could only have intended to defraud Harbeck alone, or Harbeck and his partner. If I were discussing before your Honor that this indictment was bad, because it did not name both parties, on a motion for arrest of judgment, your Honor would answer: "Sir, it is enough, if there has been a defrauding, to name any person who has been defrauded." Now, I am asking your Honor whether, if the District Attorney alleges that the intent was to defraud all mankind, and the proof on trial is that the intent was to defraud Wm. H. Harbeck alone, and his partner, the indictment is good: I refer to *Barbour's Criminal Law*, p. 116, to show that where the intent is the substance of the offense, the intent must be stated in the indictment, and *the averment of intent to defraud must be pointed at the particular person or persons against whom meditated, and the proof must agree with the averment.* Here the indictment avers that "*Wm. H. Harbeck* AND *other persons to the Jurors unknown*" were intended to be defrauded, while the proof is that the intent could only have been to defraud Wm. H. Harbeck, or him and his partner.*

The Court: The indictment is that a certain person, and others to the jurors unknown, were intended to be defrauded. The proof is, that the money was loaned by two persons in partnership, one of whom is named in the indictment. Now it is settled, that where the party named had a partner, that is not a variance, because although both were not named, the proof is that there was an intent to defraud the one named. The allegation is that there was an attempt to defraud a certain individual, and other persons to the jurors unknown, and it strikes me that the paper shows the correctness of that averment, because when endorsed—

Mr. Brady: Your Honor will recollect that the paper in the indictment has no endorsement.

The Court: For the purpose of considering the question of variance, I will assume it endorsed and genuine. Then it seems to me the paper is evidence that the motive was to accomplish what the act would accomplish, that is, to defraud every one into whose possession the paper would come †. I do not think that the motion on the question of variance is made out. I think the proof corresponds with the legal designation of the paper.

Mr. Brady: Your Honor will be good enough to note our exception.

The Court, after giving the usual caution to the Jury, adjourned to Friday, at 11 o'clock, A.M.

Friday, December 19, 1856.—*Peter K. Knapp, examined by Mr. Noyes:*—

Q. What is your business?

A. My business in March last was dry goods and commission business.

Q. At what place? *A.* Nos. 43 and 45 Broad street.

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* *Buckley* vs. *State*, 2 Green (Iowa), 162; *State* vs. *Odel*, 3 Brevard, 552; 2 East's P. C. 988.

† Barb. Cr. L. 116: Russ. and Ry. C. C. 169: 4 Wash. C. C. Rep. 726.

Q. Was there any person of your name at that time in the city to your knowledge, except yourself?

A. I don't know of any; there may have been.

Q. Do you know of any one, anywhere else? *A.* No, Sir.

Q. Is that your signature to that note? *A.* No, Sir.

Q. Did you ever authorize any person to sign it for you? *A.* No, Sir.

Q. Do you know any thing about it? *A.* I have seen it before.

Q. When?

A. Officer Bowyer brought me several notes purporting to be drawn by me, and several of them purporting to be endorsed by me.

Q. *This* was among them? *A.* *This* was one of them.

Q. About what time was that?

A. That, I think, was in October; that was the first time I saw it.

Q. Is the endorsement in your handwriting?

A. It is not my handwriting.

Q. When did you first know the prisoner Huntington?

A. I think I know him about six years.

Q. Did you ever have any transactions or business with him?

A. No, Sir, not the slightest.

Q. Did you ever authorize him to dispose of any notes for you, or anything of that kind? *A,* No, Sir.

Cross examined by Mr. Brady.

Q. Does *that* resemble the handwriting of any person with whom you are acquainted?

A. No, Sir, I cannot recognize it as that of any person with whom I am acquainted.

Q. Does it resemble your handwriting?

A. I don't think it does; some other person may be a better judge of that than I am.

Q. See whether it looks anything like your handwriting?

A. That "*P*," is something similar in its make to mine, but that is the only letter.

Q. You have no idea that a person at all acquainted with your handwriting would be for a moment deceived by that, if exhibited as yours?

A. Not at all, Sir.

Mr. Noyes:—Did you have notes out in March?

A. No, Sir. I have not had any individual note out in the last five years.

The District Attorney formally read in evidence the following:—

Phelps, Dodge & Co's note of July 1st, for $6,500; Bliss, Briggs & Co.'s note of July 2d, for $5,569 44; Thomas M. Dale & Co.'s note for $2,331 41, of June 1st, 1856; George W. Kingsley's note, accepted by Graydon, Swanwick & Co., for $7,500 of July 1st, 1856; and Peter K. Knapp's note for $5,500 of March 12, 1856.

Also the check of Hoffman & Leonard for $21,000; the check of Harbeck & Co., for $21,000; the check of Huntington for $21,000; the envelope with the memoranda identified by the witness Barry.

The District Attorney:—That then ends our case without any other reservation.

THE DEFENCE.

Mr. JOHN A. BRYAN, Counsel for the accused, then proceeded to address the Court and Jury on the opening of the case for the defence, as follows:

Gentlemen of the Jury :

I indulged the expectation until within a very short time, that the learned and distinguished advocate, with whom I have the honor to be associated, would have addressed you upon the opening of this defence; but he has deemed it fitting and proper, that that duty should be assigned to me. That I shall do it very imperfectly I have abundant reason to believe. To be associated with a gentleman of such uniform kindness and courtesy is indeed a fortunate thing for a young lawyer, and I am sure I shall ever hold in grateful remembrance his generous encouragement in thus putting me forward to speak to you upon this occasion. Whatever of satisfaction or instruction you may lose —whatever of gratification or pleasure this assemblage may lose —and, above all, whatever of benefit or advantage this accused man may lose, by this arrangement, there is no one who more sincerely regrets it than myself; and I bespeak your favor and indulgence, now, before I proceed in the effort which I shall make, to give you, in a connected and intelligible form, a plain statement of the facts which you will be called upon to take into consideration in connection with our theory of the innocence of this defendant.

The learned District Attorney, in his opening, has invested this case with a certain commercial importance; but, Gentlemen, we think you will agree with us, before this case is determined, that it is entitled to be dignified with no such importance. You will find that it is nothing more nor less than one of several transactions between brokers—transactions commencing something like a year ago, and culminating into a grand crash, where no one suffered except the brokers who have been engaged in them. Thus far there is no proof whatever that any of the commercial houses whose names are said to have been forged here, have been defrauded; so far as it appears there has been no likelihood of their being defrauded or injured.

Their case, they said, was a very simple one; and, with all its simplicity, Gentlemen, it has occupied two whole days and part of another for them to present it.

There is one noticeable feature about this prosecution which I would like to call to your minds—that is, the rigor with which they seem disposed to press it. Much was said about the atrocious-

ness of the crime of forgery. So far as that is concerned, we fully agree with them. But, Gentlemen, it is not on account of the atrociousness of this crime, as a crime, that they are induced thus fiercely to press a conviction upon this defendant. There are other reasons behind this prosecution which will be developed to you in due course. This rigor was exemplified in the first instance, by the passing over of what we have called the Belden indictment, and the taking up of this indictment, which alleges the intent to defraud Harbeck. If the learned District Attorney had been left entirely to himself, there would have been no difficulty whatever, no misunderstanding whatever on this head. His courtesy and fairness are well known; and if he would permit me, I could easily bring to his recollection the understanding as I stated it when this indictment was first called up. I feel convinced that it was a matter of total indifference to him whether this defendant was tried upon the Belden indictment or the Harbeck indictment; but, Gentlemen, the interests of Mr. Belden and of Mr. Harbeck, and not the interests of the people, are represented by the learned gentlemen who are associated with the District Attorney. They are here to protect the interests of those men, and they are here to fulfill the wishes of those men who, as we shall show you before this trial closes, desire to have this defendant convicted at every hazard, and at whatever cost in money or conscience; and such conviction is sought, not so much from a feeling of revenge, as it is from a desire to shield themselves from suspicion of complicity in these forgeries, while they at the same time put this defendant out of the way. The case, as already developed, is precisely the case which we ourselves would have proven in support of the theory of our defence—the main theory of our defence—with some trifling exceptions.

Without mentioning what that theory is, at the present time, it is proper that I should state to you the embarrassments under which the counsel for the accused have labored, because the accused has objected to the presentation of that theory of defence. No longer ago than yesterday, he interposed his objections with such a zeal, that if the case had been called on to be opened for the defence yesterday afternoon, our embarrassments would have been exceedingly increased. The counsel were put in this peculiar position: either of setting aside the wish of their client, and standing up in Court and advocating what he (the client) himself objected to, or of quietly withdrawing from the case, or of quietly permitting the trial to stop where it was and allowing it to go to the Jury with but very little additional evidence. Under these embarrassing circumstances, and knowing as we did that the accused was not deserted by his kindred, knowing as we did, too, that in a house in this city, last evening, were assembled a number of his relatives and friends who had his interests dearly at heart,—we deemed it expedient to

present the case fully to them, and be advised and governed by them; and if they were willing that this defence should be presented, notwithstanding the wish of the accused, we would feel it our duty to present it. They are willing. They dread the consequences, but they are willing. And, Gentlemen, we proclaim, now, that counsel never stood up in a court of justice and advocated a defence with more sincerity and with a deeper conviction that it was right.

Before proceeding with the narrative we will state, that the features of this case will develop absurdities which tower up into the sublime.

A history of the parentage of the defendant, and of his early life, and of his entrance into and career in New York, will become necessary; and, in giving that history, as many of the details will be omitted as the peculiar nature of the case will justify.

Charles B. Huntington was born in Geneva in this State, in the year 1822, of very respectable parentage. He can trace his lineage to the Pilgrim Fathers. His father, Israel Huntington, was for many years engaged to a considerable extent in the manufacture of cabinet furniture. He received a good common-school education, and was reared under the influence and moral training of intelligent and pious parents. He was a regular and zealous attendant of Sunday Schools, and became so familiar with the Scriptures and their teachings, that it was noticed with pride by his relatives and friends; and there was in him, at one time, what appeared to promise a moral and useful life. On inquiry into his history, we learn, however, that in early childhood there was observed in his composition, strange and inconsistent elements of error; and when brought under the strict discipline of his stern but loving father, he quietly submitted to the severe corporeal punishment which was frequently inflicted upon him (and which, it must be confessed, he seemed to deserve), with the resignation of a martyr, without murmuring, with no show of resistance or defiance; but these rigorous chastisements proved unavailing, and were not salutary in their effects; for, without appearing to remember the whippings, and with apparent want of appreciation of the consequences of mischief, he again and again repeated and persisted in his erratic ways. He had a *penchant* for destroying property, which was guided by no adequate motive, and which was susceptible of no reasonable explanation. An irresistible longing to know the contents or composition of a toy or other curious thing was certain destruction to it in childhood; and this *penchant* for destruction, merely to gratify an absurd and morbid curiosity or a whim, has followed him through life. He has cut into a valuable rosewood piano to discover whether it was made solid of that expensive material, or whether it was simply veneered; he has dissected watches and musical boxes, however delicate or expen-

sive the mechanism, and has as often put them beyond the reach of repairs. He has been industrious in this work of petty destruction, and in childhood, in boyhood, and in maturer years, he has been a marvel to his acquaintances.

We shall see in due time, what this singular error of his mind ripened into, and into what varied forms it, from time to time, developed itself. In some instances the narrative must lift the veil and bring in glaring daylight, many painful and distressing occurrences, which we would gladly shut out from the view, and save them from the comments of the unfeeling and uncharitable, were it not that the circumstances attending the termination of the remarkable career of this unfortunate and deluded man, render necessary an unreserved and complete exposure, to the end that you may judge of his actions in a true light and with intelligible certainty.

In the year 1843, and at the age of twenty-one years, he left his native place, and came to this great City, where, as you all know too well, crime and error and mischief of all kinds, not only lurk in byways and in dark and mysterious hiding places, but stalk in broad day, in the open streets, and inhabit and grow and thrive in public places. He had learned a little something of his father's calling, and beyond this he had no knowledge of business. After waiting a few months, he found employment as a clerk, in the furniture establishment of one William S. Humphreys, in Chatham street, where he remained till December, 1845. He then formed a co-partnership with one Linsey, a foreman in Mr. Humphrey's factory, and the firm of Huntington & Linsey, with a small capital, (some of which Huntington borrowed from an uncle who lived in Alabama,) opened a store for the sale of furniture in Hudson-street, and there they remained until June, 1847, when they failed, and made a general assignment, for the benefit of creditors, to the very respectable firm of J. & S. Randel, to whom they were indebted, and who went on and closed up the business. The failure, you may not be surprised to learn, proved to be a bad one, the assets paying, I believe, only ten cents on each dollar of their indebtedness.

Here we find him left with several thousand dollars of indebtedness to carry and to discharge before he could reasonably hope to enter upon another business undertaking. It was a severe lesson to him, if he was ever open to receive one; and he went home to reflect, if it may be said that he was ever capable of reflection. His father had then removed to Syracuse, where he has been engaged for several years, with other competent members of his family, in keeping a seminary of learning for young ladies. He made a visit there of several months, and, again returning to this fatal field of his operations, he imagined that Wall street would furnish him with an opening, which, in one way and another, has proved true.

He turned broker.

We have now traced him into Wall street. He had a sign painted on a piece of tin, sometimes called a shingle, and hung it up in the window of some basement down there, which was also occupied by some one else, who had sub-let to him desk-room in the rear. He had no capital—no experience—no moneyed friends—no financial facilities—literally nothing which might be said to constitute a stock in trade for successful scheming, speculating, or operating in any of the characteristic ways, nor by any of the characteristic methods, peculiar to that atmosphere. But into Wall street he went, and he became a broker,—not a stock broker, nor a note broker, nor a land broker, nor a broker in any one particular thing, but a broker generally—a broker in the most comprehensive sense of that term. There I see him now, a very young man—I might say a lad of 24—sitting at his little desk scribbling, and idly waiting—for what? It may be that he expected some philanthropic gentleman would come in and load him down with bullion and ask no questions; or, having no moneyed friends, no capital, no financial facilities, no experience—it may be that he was struggling in the "Slough of Despond," and it is not at all improbable that he thought of retiring from that great mart and maelström, where cash, credit and corruption, with "confusion worse confounded" carry crazy creatures crashing through a crowd; and I think I may safely venture to affirm, that he did think of retreating before his fading hopes, and that he sought to escape from all this bewilderment and din; but the sequel shows that the overshadowing tower of Trinity Church must have chimed the alluring music in his ears of—

"Turn again, *Huntington*,
Lord Mayor of London,"

—and with confused recollections of the Whittington of nursery memory, and amid a confounding of localities, he turned like Whittington, and like Whittington, he hoped to reign. Be this at it may, I shall be unable to inform you of the precise thoughts in which he indulged on this particular occasion, when sitting at his little desk; but I think I am prepared to state generally, that they were gloomy; for not long afterwards he was engaged in two very solemn enterprises: one was to provide a place suitable to the wants of the people of Baltimore, for the burial of their dead, and the other was to provide a similar place for the like purpose to accommodate the dead of Buffalo. In the first of these enterprises, he convinced some newly-acquired acquaintances, that it was prudent for them to embark their means. The result was, that the project failed, and his friends were nearly ruined. The other was projected on the heel of the failure of the first, and he failed in that also. And subsequently to this, he still clung to his favorite idea by having a hand in a monster cemetery nearer home—

the name of which I do not care to mention—which from that time languished, and languishing did live, until some year or two ago, when from its languishing it died, and was buried, with all its dead, into the bowels of a new company, which he also touched, and it now languishes after the old fashion.

Now, here we take our ground, and we turn to the prosecution and their witnesses, and we ask them to place their hands upon their hearts, and say, whether they know of a single enterprise of Charles B. Huntington's projection, or a single operation of his negotiating, or, in fact, a single business transaction of his, wherein he really exhibited what may properly be called shrewdness. We challenge them to name and bring to the test, a single instance where he has shown anything like good business capacity. It is true that this want of capacity, this lack of shrewdness, may not have been readily discoverable cotemporaneously with his transactions, (for he had an easy, pleasant, quiet, plausible, winning way with him, which was well calculated to lull inquiry); but upon investigation they have turned out, and upon investigation, before-hand, might, in nearly every instance, have appeared as they really were, crude, crooked and fallacious—in reality no more nor less than the workings and results of a morbidly-erratic intellect. And we go still further, and we say that we do not believe that Charles B. Huntington ever had a regular, legitimate business transaction with any one in his life, unless he acted under the advice, by the direction or with the aid, of some other competent person. His schemes would all have exploded on the instant, had it not been for the interposition of other persons; and even with the aid of others, we have never heard of his succeeding in an affair of importance in a single instance, unless it was by mere chance or accident.

We might name several other very wonderful schemes of his, which involved large expenditures and consequencespro portionately disastrous to those who became directly and indirectly interested with him; but it would tire you if we went into detailed explanations of their origin and fate, or if we should endeavor to bring to your notice the half of them. We have only time, in this connection, to allude to a few of them.

There was a steam-laundry on the Isthmus of Panama, to wash the dirty linen of emigrants to and from California. Several thousands were expended in this enterprise, and the whole concern speedily went to rust and total ruin. He had figured out his receipts at an average of $800 per day; but it turned out that that was about the average of the losses of this concern. Next we find him erecting upon the ruins of this private speculation a stock company called "The Panama Steam-Laundry Company," and we find him issuing certificates of stock, a specimen of which I now hold in my hand (exhibiting it to the Jury); but this was so stupid upon its very face, that I believe he never found any one credulous enough to entertain it for a moment.

Next we have a bank which he created and called the Farmers and Merchants' Bank of Georgetown, directly under the eye of the President of the United States, and all the other dignitaries, domestic and foreign, at Washington assembled. I will venture to say that all obstacles in the way of successful banking were never more easily surmounted. Without troubling himself about mortgages on lands where "the *wild cat* pursues his way unscared," or about any other such suitable banking basis, he at once ordered bills to be struck off, and filled them up; signed them with the names of two of his relatives as president and cashier, and for a time spent or rather "circulated" them freely, until a screw became loose in his facilities of redemption, and he was arrested and indicted under the administration of the lamented Blunt, and his assistant—who is now the learned District-Attorney here present. The noble-hearted Blunt saw Huntington; and, after a while, became impressed with the absurdity of the whole thing; and so convinced was he of an absence of real intent to defraud, that he finally placed the papers (with the sanction of the Court, undoubtedly) into that mysterious pigeon-hole which now and then mercifully catches a *statu quo* indictment. A case sometimes occurs when the Court doubts the propriety of a conviction, or of an acquittal, or even of a *nolle prosequi*, but prefers, by a kind of grace, and through a well-tempered mercy, to let the charge remain *in terrorem* merely. A few years' experience in a public prosecutor's office has taught me that the exercise of a sound discretion in these matters is the only sure road to the fulfillment of that time-honored maxim, "Justice should be tempered with mercy." The community were apprised of this affair by flaming accounts of this ridiculous banking operation; the newspapers were filled with it; and one would suppose that the Wall-street gentry had had enough of Mr. Huntington. Poor Blunt never dreamed that he would resume business again here; for there stood the indictment, and there stood the culprit, with a ruined character and blasted reputation. But he did resume, and went on again, feeling in the simplicity of his own heart and amid the confusion of his own deluded mind, that he had done nothing wrong. For your better enlightenment, Gentlemen, I now present you with some of the bills of this famous institution. You will perceive that the filling up and names are all in one handwriting.

The District Attorney: I suppose that at this stage of the proceedings it is hardly proper to show those papers to the jury.

Mr. Brady: We have not handed them to the jury. We do not wish to bribe them by such money as that. (Laughter.)

Mr. Bryan: Next he went to the State of Maine to get a charter for a bank from the legislature, then and there in session. He had a vague impression that his late financial undertaking was not precisely regular, and now he purposed to *legalize* a bank which

should possess the same easy virtue which characterized the other. He found the assembled wisdom there opposed to granting bank charters, but that they were very lavish of favors in the way of granting manufacturing charters. It then occurred to him that he might get a bill passed ostensibly for such purposes, but with a section engrafted upon it giving him certain blind and inferential banking privileges. He drew up such a bill himself, and procured its passage (although he was an entire stranger among them,) and fixed upon a site for manufacturing operations, under the charter, at Lewiston Falls, on the banks of the Little Androscoggin river, which euphonious title was given to the act of incorporation. These manufacturing operations were in appearance to be confined to the making of paper out of straw, by a newly discovered chemical process; but the machinery turned out to be in reality designed for the manufacture of paper for banking purposes, and the *banks* of the Little Androscoggin were relied on for redemption. He brought an authenticated copy of this remarkable charter back with him to Wall street; friends were enlisted, and wildly and excitedly advanced their means for the purpose of putting the Little Androscoggin Company on a firm footing. It created a sensation, and was coveted by many imaginative individuals who knew of it. Bank bills were engraved, certificates of stock were prepared and ready to be issued; but, alas! his sub-*lunary* hopes were doomed. The Boston banks associated together, declared it to be the scheme of a madman, and went to the legislature and had it repealed. It may be, before the trial is over, that we shall be able to present you with specimens of the bills and certificates of stock in this illustrious institution also.

With the expiration of the Androscoggin, Huntington went down, and he was literally an object of charity among his friends. The very persons who had suffered by him were moved to pity, and he was assisted with small sums of money from time to time; and in November, 1853, he was aided with sufficient to take him to California, and there he went; and after remaining there until the spring of 1854, with but little success, he returned and found that his liabilities on account of his former Wall-street operations amounted to the handsome sum of about $140,000.

It becomes my duty, Gentlemen, to inform you in this connection, that the bulk of this large indebtedness grew out of a great variety of—FORGERIES! forgeries which he had committed on different occasions, under very similar circumstances to those under which he committed the series of forgeries for which he now stands charged upon the 27 indictments, on one of which he is now undergoing a trial,—a trial where not only his liberty is involved, but his life; for the punishment imposed by the statute under convictions on this number of charges would consign him to an im-

prisonment exceeding an ordinary life of three-score-and-ten years, Yea, for over a CENTURY! You have only to multiply the 27 indictments by 5, and you have the number of years exactly,—An imprisonment, Gentlemen, be it short or long, which his delicate constitution, and highly nervous and sensitive temperament could not withstand for a single year.

In order to illustrate the theory of this defence, and to give you a clearer idea of the impulses which actuated and governed him in the commission of the forgeries with which he now stands charged, it becomes necessary that we should make known to you some of the leading features which characterized his previous acts of a similar nature. The instances were numerous, and the persons who suffered were many. As near as I have been able to discover, these illegitimate transactions were perpetrated upon those who are reputed to be shrewd business men; and some of them are very respectable, and occupy positions of high social standing. Gentlemen, we are not yet fully satisfied of the propriety of disclosing their names, and we refrain from doing it for the present from motives of delicacy. Nevertheless, we shall be guided by circumstances, and shall not hesitate, provided the necessity arises, to ask them to overcome their reluctance, and give to this Court and to this Jury an explanation of the actions and conduct of Huntington in these affairs; and more especially would we invite them to explain how it was that, knowing his guilt, they forgave him and destroyed the evidences of it, and continued their intercourse and association with him upon friendly terms; such intercourse, in some instances, amounting to a brotherly intimacy. It is natural, very natural, that they should hesitate to acknowledge a fellowship with crime. But, knowing what I know, and seeing what I have seen, latterly, of this man's career, and comprehending what I have discovered during the short period which has been allotted me for investigation, I perceive naught that is very singular or strange in this seemingly anomalous and mysterious conduct on their part. If any of them should be within the sound of my voice, I earnestly beseech of them to ponder well what I utter in this connection, and to step forward fearlessly and like men, should they be called. I put it to them, whether, when they discovered their losses, and followed up their discoveries by demands of explanation from this strange being, they were not impressed with doubts which finally ripened into a deep-seated conviction, that Charles B. Huntington, in fact and in truth, had not intended maliciously or willfully to injure or defraud; nay, more, that he had no adequate motive to commit the crimes, in the sight of which they, at first, must have stood appalled. Struck with these impressions, I doubt not they exclaimed, in the language of some of the witnesses whom it will be our privilege to present to you, "The man must be crazy." But it is quite probable they meant

such expression merely in a conventional, and not in a legal sense. In this category I think we may safely place the late prosecuting Attorney, to whom I have before alluded. When you shall come to know all, Gentlemen, you will find in the conduct of these men a key to unlock the hidden recesses in the heart and mind of this defendant. You will find that he was not a mercenary forger, and you will find that the *animus furandi*, as the lawyers express it, was no more an element of these offenses than we find in the lad, who covets and partakes, over a garden wall, some tempting fruit which does not belong to him. I will not undertake to find an excuse for either this man or that boy, but the law looks for motive in proportioning to the fault the punishment it merits. And we declare that guilty motive was equally void in both of them.

Let us proceed with our narrative. On his return from California, in the spring of 1854, his old friends who had suffered by him in the manner I have before stated, and who held the bulk of these one hundred and forty thousand dollars of claims against him, found in him the same childlike simplicity, the same easy, pleasant, quiet, plausible, winning ways; and they unhesitatingly held out to him an open hand. He seemed to have no recollection of having injured them; and he went to them for countenance and aid, the same as if they owed him debts of gratitude for past benefits and favors. He obtained from them a full and complete release and discharge from all their claims, and nearly, if not all of his other creditors, in the course of things did the same; so that before the time of his commencing the series of forgeries with which he now stands charged, he stood erect, entirely freed from debt. Before this end was accomplished, however, there were certain of his creditors who pursued, harassed and goaded him almost to desperation, and almost to his self-destruction.

Let us now retrace our steps, and follow him up to this time in his social relations. In the year 1849, while in the flush of a little prosperity, he married a highly respectable lady from Connecticut; and she has had, you may be assured, many varied and painful experiences in her matrimonial life. But with all his failings and misfortunes, and with all her anguish and suffering on account of them, she always found something to buoy her up and make her hope for better days. But she was troubled with poor health, and, possessing withal a cultivated mind, a sensitive heart, and high moral sentiments, she was more than ordinarily keenly alive to the unfortunate and distressing circumstances by which she was so frequently surrounded. Like a true woman, to him she clung fast. Yet it is but justice to her to say she was never aware of any of his forgeries until the time of his late arrest. She did know, however, of his indictment in the bank affair; and, distressing as that

was, the wounds it inflicted were healed by kind and plausible explanations, which were made to her by compassionate and considerate friends. They now have two children living, and the misfortunes of the family have been in a measure ameliorated by the warmth of his affection. He was a loving husband and father, and uniformly amiable, except when he labored under the influence of what may be called his malady. For his devoted wife he would have laid down his life. It was his love for her which made him halt in many of his resolutions of self-destruction, and which made him once cunningly devise a plan for defrauding a Life Insurance Company, by insuring his life for her benefit, and then destroying himself in such a way that the hand of the Suicide could not be discovered, to avoid the policy. In the instance to which I now refer, he contemplated carrying out his design by jumping after one of the ferry-boats as it left the slip and thus drowning himself apparently by *accident*. Here was the ghastly cunning of a diseased mind, and when I mention the incident it carries with it its own commentary. He visited and corresponded with his aged father, whom he highly respected and filially loved; and, unlike a man steeped in crime, he was domestic in his habits, temperate in his mode of life, a stranger to the gaming table, amiable in his disposition, and benevolently active when he had the power of doing good. At times he sojourned at boarding houses and hotels, in apartments of greater or less pretensions; and, at times, he kept house in dwellings and parts of dwellings, of greater or less proportions. The fickleness of his mind was the occasion of very frequent and ill-judged removals. At one time they would live in comfort and plenty, and at another would be reduced to penury and want. Then he would rise again to a seeming prosperity, and as quickly fall to a condition in decided contrast with it.

From March to July, 1855, he occupied part of a house in Nineteenth street, at the small rent of $300—you will oblige me by noticing the date, Gentlemen,—and he there conceived the idea of returning to California, and proposed, before going, to provide his wife and family with an entire house somewhere, so that they could live as moderately as they chose, during his absence, without the world's knowing it. This was upon the suggestion of his wife. In July, 1855, he obtained and very plainly furnished a house in Thirty-ninth street, at a very moderate rent—be so good, Gentlemen, as to bear in mind the date!—About this time he was taken sick, and remained so for a couple of months. He had previously had the Panama fever, and it is believed that that had something to do with his illness; but this illness was essentially aggravated by his mental anxieties, and the great depression of spirits under which he labored, on account of his embarrassments and disappointments.

At this time, and for a considerable period previously to it,

he may be said to have sustained himself and family principally by the aid of his friends; and bearing in mind these dates, we ask you, Gentlemen, to take notice of the fact that this deplorable condition of his affairs immediately preceded his accession to the unbounded wealth which I shall presently describe to you.

The first intimation his family had that prosperity was dawning out of this darkness, was that he became more cheerful. His wife went to visit some friends at a distance; and, while she was gone, he sold out his household in Thirty-ninth street, and fitted up another, very elegantly, and entirely disproportioned to what appeared to be his means, and had it ready, as a great surprise to his wife, on her return. And, when she returned, he took her into it and presented it to her with a kind of childish delight. Like a prudent, sensible woman, she was displeased, and remonstrated with him for his extravagance. She told him he could not afford it, but he replied that he could, and explained this sudden attainment of luxurious ease, by saying that a Mr. Belden (of whom you will hear a great deal more anon) had helped him into business; and he warmly congratulated her, and went through with a variety of silly antics on account of the joy which he felt in being able, like the Whittington of old, to dispense favors and make everybody about him happy. This was at No. 100 East Twenty-second street, and one would suppose that all his longings could there be satisfied. But in the course of two or three months, he hired, upon a long lease, and fitted up with imperial splendor, another house in the same block, with the design, we are told, of presenting it to a gentleman who had suffered heavily by some of those old forgeries; and this was done by way of showing his gratitude and appreciation of this gentleman's kindness in joining in the release which had put it in his power to resume operations and reach this wonderful, this certain, this real, this permanent prosperity. But the gift, from feelings of delicacy, on the part of this individual, was very properly and nobly refused, and the defendant thereupon moved into it himself, and then gave away his other establishment, or threw it away, in some manner and for some purpose, or he left it at commons, or he had no object in reference to it, or he did or did not do something else, I cannot tell what, when or how. My mind is confused on that subject; but some of the learned gentlemen on the other side have been pursuing their investigations in that quarter with reference to some civil suits, and will, no doubt, undertake to make you believe that there was something wrong somewhere about that locality. I only know what they have intimated on this head; and their intimations have only gone the more to convince me that the peculiar theory of our defence, which I am now presenting, is the true one. They may show what they like in that quarter. It is entirely susceptible of explanation, and can be brought in perfect consonance with the innocence of this defendant.

ington the temptation to commence and to follow up the commission of the series of forgeries with which he now stands charged. It was Charles Belden who picked him up out of the miserable and forlorn condition in which I described him a little while ago. It was Charles Belden who whetted Huntington's diseased appetite for show and splendor, by invitations to dine in company with his wealthy acquaintances, and by familiarly patting him upon the shoulder, as a kind of pet, and smiling with approval upon his mad career of extravagance and prodigality. This Charles Belden, we believe we shall be able to show, knew that this poor being, who had no moneyed friends or pecuniary facilities so shortly before, kept an account in the Bank of the Republic, with deposits for a period of only five months prior to his arrest, amounting in the aggregate and upon the average to the enormous sum of over one million per month. Mark, Gentlemen, a total of five millions in five months!!! And he knew, too, that Huntington kept very heavy accounts in several other Banks; and he either knew or might have known that Huntington had built up this large business, and was enabled to handle these unwieldy sums, through the instrumentality of forged or fictitious securities, which, as near as we can ascertain by a tolerably accurate computation, based upon the frequent renewals of his loans on wide margins, must have reached, during the year in which he followed these practices, to the staggering amount of nearly twenty millions! Why, Gentlemen, he persuaded Huntington to take into his employment, ostensibly as a clerk but in reality as a spy over his conduct, a man named Barker, who was then one of his and Harbeck's attachés, and is one of their relatives. We shall show you that the *idea*, that Charles Belden knew something of these forgeries, is not so monstrous as the *fact* that he did. Here we take our stand and we sweepingly declare that he *did* know it. We shall show you that Huntington was so incautious, that on a number of occasions he left forged commercial paper in the hands of Belden until it was past due, and Belden, knowing it to be forged, has brought it to Huntington to be paid, and it has been paid, and no questions asked or explanations made. And we shall demonstrate to you that the circumstance which led to Huntington's detection was purely accidental, and the discovery was made as much through want of caution on the part of Belden as on the part of Huntington.

I can hear you ask, and I can hear the prosecution argue,—how came Belden to be caught? How came Belden to be such a heavy loser? The answer is two-fold. In the first place he is notoriously known, and he is, in fact, the most notoriously inexorable, aggrandizing, grasping usurer among us. And he is equally well known to be as gentlemanly, as accomplished, as scientific, as cunning, and as apparently decent with it all, as any graduate in the school of money-lenders ever known. One

hundred per cent. per annum is a rate with which he is familiar; and the defendant here has often paid him more than that, on what purported to be the very best securities. And if Charles Belden is permitted to go on unchecked, I should not be surprised to learn of his holding out his hand for "eight per cent. per minute," which is a rate now and then jestingly alluded to in Wall-street, until it has become a by-word among the initiated there. Therefore, I say, in the first place, as an answer to your inquiry, that this usurer became as reckless in his gains as Huntington was reckless in his losses. He became blinded in his avariciousness and cupidity, and the evil day came upon him before he had perfected his preparations to meet it. In the second place he supposed he had opened avenues of escape. Knowing that Huntington was meagerly supplied with moneyed friends and financial facilities, he took occasion, at an early day, to introduce and commend him in lofty terms, to several banks, bankers, and money-lenders, and he hoped to be able to strip from Huntington, out of the means which he should obtain in those quarters, not only sufficient to reimburse himself, but sufficient to choke his own capacious, gormandizing coffers. And it may be a satisfaction to all the other losers, to know the great first cause to which they can trace and attribute their losses.

The Harbeck who was upon that stand, we have not done with yet. His cross-examination proceeded as far as we deemed it prudent to press it, before this defence should be formally opened. The idea that he took no more than legal interest,—the idea "that he had no hope and no expectation of receiving more," is an absurdity which towers even above the absurdity of the forgeries, with all their lofty and sublime proportions, which I have in plain terms, endeavored to describe and explain to you. Jurors! the crime involved in the declaration which he made upon that stand, according to my humble judgment, far exceeds, in atrociousness and dastardly meanness, the crime which the learned District Attorney so eloquently described in his opening. I can tell him that Forgery is not the only species of lying which constitutes crime,—for there is an offence of this description still more dangerous and damning, in the sight of God and Man, whether the interests at stake be *commercial* or otherwise.

Gentlemen, let us look at the half million now remaining out of the twenty millions of the forged paper to which I have alluded. I wish I had it all here, that you might see it,—it would fill a basket of respectable size. He forged it, too, while occupying the identical chair which the great railroad forger, Robert Schuyler, occupied. But when Robert Schuyler occupied it, that chair contained a mercenary forger, which was not the case when the defendant sat in it. We shall be able to show you that some of this paper bore fictitious names,—that it bore the names of high and low, from the errand boy in his office, to his

poor lawyers, and from them up to your merchant princes. To use the slang phrases of the Brokers, it ranged from "sore noses" up to "gilt edges." We shall show you that the signatures were written without any attempt at imitation. In the selection of the indictment which they were desirous first of trying, they may possibly have had an eye to a similarity between the forged signature and the genuine; and out of this whole mass of paper, the nearest resemblance was in the name of Phelps, Dodge & Co., —a very poor imitation, if it may be called an imitation at all. But whether he imitated it or not, we mean to argue that it could make no possible difference. And we will further show you that the whole of it was so bungled, and that there was such a similarity in the lithographic blanks used, that it is wonderful how any man of sense could credit them for an instant. We shall show you that he signed the names of firms with frequent inaccuracy—sometimes leaving out a name, sometimes putting in an extra name, and sometimes reversing the order of the names. We shall show you that in the course of his career of forgery, he has frequently signed names himself when he might have obtained the genuine signatures by simply asking for them. We shall show you that he has raised moneys on forged securities, at the usurious rate of sixty per cent. per annum, and even at greater rates, and has lent out such moneys himself at the rate of only eighteen per cent., and even at legal rates. We shall show you that he has raised moneys on forged paper at an enormous rate, and has purchased large amounts of genuine paper at nine per cent. per annum; and that the next day, or very soon after purchasing such genuine paper, he has, in some instances, sold it at a discount double that rate, when he might readily have sold it for the same rate at which he bought; and we shall show you that he raised moneys on forged paper at the like enormous rates, and, after investing it in unsalable stocks and other securities at full prices, he at once borrowed moneys on such new securities at the same ruinous interest; and that during all these transactions he kept no books nor entries from which the state of his affairs or the character or extent of his dealings could be ascertained with any approach to accuracy.

And we shall follow up this proof by showing you, that in some instances he used forgeries to obtain money on credit, when no security would have been required for the loan or credit and none was asked; that he adopted no means to prevent persons interested from inquiring and ascertaining whether the paper placed by him in their hands, was genuine or not; that he made no arrangement to escape or prevent his arrest, if any of such forgeries were detected; that, on the contrary, his house and equipages, and acquisitions of property were procured and adjusted with the design to remain permanently in the city or its

neighborhood; that he kept, at the time of his arrest, three spans of valuable horses, and had just finished a new stable in which he intended to keep them; that he purchased eight acres of land at Yonkers, near this city, in September last, for $24,000, on which he paid $16,000 in cash, with a view to build a residence thereon; when he had before that uniformly declared his disinclination to live out of the city proper; and, as the record shows, he owned this real estate at the time of his arrest; that such payment was made out of moneys obtained on forged instruments made by him; that he bought household articles and personal apparel, and made a great variety of other purchases indiscriminately and in large and extravagant quantities, without regard to his actual wants; that all his purchases were, with trifling exceptions, made for cash, and paid for out of moneys raised upon forged paper, when he might have obtained them on credit; that he paid large amounts to creditors from whom he had been released out of moneys obtained from this series of forged paper; that having it in his power, he omitted to destroy evidences of his forgeries; that he procured a young and inexperienced and honest person—a relative (Mr. Barry)—to prepare notes which he subsequently converted into forgeries; that he had no appreciation whatever of the ruin and disgrace which must inevitably befall himself and family; that he made no preparation to accumulate or save any property for himself or family, notwithstanding he was solicited to make provision against a failure in business or other like misfortune; that he even made no preparation for defraying the expenses of his defence in the event of his exposure; that he has since his arrest sent to several persons who have suffered by him, soliciting money to aid him in his defence; that when first arrested on the only forgery then detected, he was bailed in $20,000, with two of his alleged victims as sureties,—one of whom was Charles Belden, and the other the Harbeck who has been sworn here,—and was suffered to go at large for a day without making any effort whatever to escape, but made and kept an appointment to meet these two alleged victims at the house of one of them in the evening following his arrest, and there, in effect, admitted that nearly all the commercial paper which he had delivered to them were forgeries, and wept with them over this state of things (the first tears probably that Charles Belden and Wm. H. Harbeck have shed for many years. If you want to draw tears from them, you must touch them in the pocket); that the next morning, when at large, and not under arrest, he made a voluntary assignment to these two alleged victims, whom the indictment alleges with such solemnity it was his intention willfully and maliciously to defraud, giving them all his property and effects, to the exclusion of all persons else, be they deserving creditors or not, and this too without reference or regard to the amounts of the debts alleged to be

due, and without at all considering the amount of property which might pass by that instrument; that his connection with all the other forgeries was soon afterwards made known to the police authorities, and upon a re-arrest, he was committed to prison, where he has since remained cheerful and confident that he will not be punished; and I might add that one reason why he was so loth to have this defence entered upon was because he believed that these jurors would consider him, even upon the evidence as it stood yesterday, neither KNAVE nor FOOL.

Gentlemen, whether the defendant will be punished or not, it is for you to say—but his Counsel believe and intend to maintain that there was no guilty intent for which he is criminally responsible. It was not until a number of days after his arrest that the theory we have adopted was suggested to us. He was assured by my associate, on the faith of the published testimony as it appeared in the newspapers, that there was no hope for him, and that all he could do would be to endeavor to place him in a position where he could throw himself upon the mercy of the Court with some measure of success; but he showed an entire want of appreciation of his advice, and blindly assured us that he had done nothing for which he ought to be punished, and that he was sure he would be acquitted. He was so confident and unconcerned, and made so little impression upon us of his guilt, that we sought for some explanation of this strange conduct; and, without any suggestion from him or from any of his friends, but simply from a remark made by one of the prosecuting witnesses to the Police Magistrate who committed the defendant to prison, and by that magistrate incidentally and without any particular object repeated to me. This witness was no more nor less than Wm. H. Harbeck himself. He remarked to the magistrate that he thought Huntington was crazy, but he probably did not mean it in the legal sense—no more perhaps than he meant his astonishing testimony of yesterday to be considered in a legal sense or treated in a legal way. Nevertheless it had its bearing, and gave us a clue to inquiry, and upon inquiry, and with the aid of the Doctors after personal inspection of the defendant, we became convinced that he was as clearly not accountable for what he had done as if he had been a child not yet arrived at years of discretion.

We say that he acted under the influenco of that insanity which is commonly called *monomania;* that in the particular act charged he was affected by a morbid condition of the mind which excuses him from criminal responsibility. This is exhibited in his reckless and incautious habit of forgery without any actual or sane design to defraud or injure, and without any of the ordinary cautions adopted for concealment—the motive being exclusively the insane impulse, and the object that of acquiring large amounts of money without any regard for their

value. The defendant always supposed that he could, and intended that he would, meet his obligations and accumulate wealth; but his acts, without his being aware of it, necessarily prevented either of these results.

At another stage of this trial these considerations and the legal propositions bearing upon the question of insanity will be more ably stated and will be elaborately argued by my learned associate.

Gentlemen, we would not have you determine this want of accountability in the defendant from any one or two of his acts. If we did we should too much, perhaps, resemble Scholasticus, who thought to convey a full idea of his house from a specimen brick which he carried with him. It is from a connected view of the whole of this man's life and acts that the character of his erratic intellect can be determined. The learned gentlemen for the prosecution will tell you and they will argue that all men have their follies, and many their eccentricities of conduct and idiosyncrasies of thought, but that these things go but a little way to excuse crime in any form. We answer them and say:—Where the peculiarities of the mind deprive the subject of the power to distinguish between right and wrong in the commission of any particular act in its nature criminal, or when the impulse to commit that act is irresistible and uncontrollable, no matter what amount of cunning may accompany the act, and no matter what motive may have actuated the individual, his hand is guided by a power which he cannot resist, and the act is not his own.

> "Was't Hamlet wrong'd Laertes? Never Hamlet:
> If Hamlet from himself be ta'en away,
> And when he's not himself does wrong Laertes,
> Then Hamlet does it not: Hamlet denies it.
> Who does it then? His madness. If't be so,
> Hamlet is of the faction that is wrong'd;
> His madness is poor Hamlet's enemy."

Gentlemen, from the time the mistaken prosperity of the defendant commenced, something over a year ago, he has slept, and still continues to sleep, sweetly. With such a weight of guilt as is here charged on him, no man, able to distinguish between the right and the wrong of such deeds, could fail to stagger beneath the enormity of such crime. He would toss him on his bed, wakefully, under a troubled conscience, and would turn him on his pillow, and groan heavily from a heart crammed with remorse. But he slept sweetly, awoke cheerily, and pursued his *business* and followed his pleasures without a thought of guilt.

The books tell us of homicidal maniacs, who kill, from some well-defined though singular motive; and, even when the killing has been followed by flight, and efforts to conceal it, an acquittal has been ordered by enlightened courts. They tell us also of

those who have a *penchant* for theft, and steal whenever occasion offers, and, even where the things stolen have been used in the gratification of some well-defined desire, they have been held not accountable. I might cite you many reported cases. Let one suffice. There was the case of the *People vs. Sprague*, (2 Parker's Crim. Rep. 43), where the prisoner was indicted for a robbery, alleged to have been committed in August 1849. He was tried at the Oyer and Terminer for Kings County, in the following October, in the City of Brooklyn. The principal witness testified that as she was walking along Pearl Street, in the City of Brooklyn, she heard some person behind her, and on her turning round, she saw a man who seized her, knocked her down, took a shoe from her foot, and ran away. He was indicted for the robbery. The presiding judge upon the trial, charged the jury that there was no question made that the prisoner had not done the act alleged in the indictment, and that the only question for them to decide was, whether the prisoner, at the time the act was done, was a responsible moral agent, it being shown that he had been in the habit of taking off the shoes of females, hiding them away, and keeping them for the gratification of some whim or motive, which was well-defined enough, but difficult to explain; and that if at the time he did the act the prisoner was of unsound mind, and acted under an impulse, which at the time overthrew or *obscured* his capacity of judging between right and wrong, then he was incapable of committing a crime, and must be pronounced not guilty. This was a case where the prisoner was supposed to be perfectly sane upon every other subject. One of the medical witnesses testified that, from the evidence in the case, he was clearly of opinion that the prisoner was laboring under a derangement of his mind, that the act appeared to be an insane act, and that it was not uncommon for monomaniacs to secrete and to endeavor to escape. Gentlemen, even if you should find here that the defendant Huntington had committed acts which would carry with them certain *indices* of guilt, nevertheless it would have been perfectly natural, and consistent with our theory. The learned doctor in the case cited also said, "that cases of strict monomania are very rare, but do exist, and in such cases all conduct not affected by the peculiar delusion may be perfectly natural. The cases of insane impulse are more frequent than those of monomania; and acts done under insane impulse are more likely to be remembered than those done under the influence of monomania." The defendant in this case was acquitted. And there are a great variety of other cases of a similar nature. I presume that some of you have heard, or even known, of instances where persons, especially females, have stolen nearly everything they could pick up in stores, or when visiting their friends,—that they have secreted those articles, and taken them home, when there was no ne-

cessity whatever for them to steal. The books also tell us of perjuries committed to gratify well-defined motives of revenge; and yet, when it appeared that the truth would have subserved the same end,a nd the party was incapable as a general thing of telling the truth, when it would answer his interests better than a lie, he has been held to be a monomaniac, and not responsible. In the older works on medical jurisprudence, we find that if any *motive*, adequate or not, was detected, it consigned the culprit to a felon's doom. In those days a barbarous notion prevailed that the victim of insanity should be made a victim to the law. There was no sympathy for the lunatic. Such an institution as an insane asylum was not then known. Nothing short of insane paroxysm or downright idiocy would avail as a defence. In those days too, the regicide was visited with a pecuniary penalty when he would have been hung if he stole a shilling. In later years, however, medical jurisprudence has been more just and discriminating. Insanity in all its great variety of forms has been made the subject of patient and enlightened investigation, and of humane efforts to cure and ameliorate the conditions of those unfortunate beings who are possessed of unsound minds; and it is our intention to aid your judgment in the present case by the testimony of some of the ablest and most distinguished medical men in this country, whom we consulted, and by whose opinions we were aided and instructed before we would assume the responsibility of advocating this defence. These gentlemen will be guided in their opinions, not only from personal inspection of the defendant, and from proofs of the facts I have already related, but also from the additional fact that there has been derangement in some forms among his ancestors, and it may be that an hereditary taint is traceable to him.

Gentlemen, I have, perhaps, already detained you too long, and I beg you will excuse me if my zeal has led me into an abuse of your patience. There is much that I have omitted which might have been said, and many unaccountable acts of this defendant that I might have related, to strengthen and illustrate the theory of this defence.

The proofs, as I have stated them, will require the examination of a large number of witnesses. We cannot hope to procure the attendance of them all. Some of them, we have reason to believe, have been sent away and put beyond our reach, through the agency of Charles Belden, or some of his confederates. Some of them are absent on business, and some have absented themselves from a mistaken apprehension, that to appear here and tell what they know, will prejudice them. The nature of the case is such, and the interests at stake are so peculiar, that we can hardly expect that a postponement would enable us to be better prepared to go on.

If you shall become satisfied, gentlemen, that we labor under

these disadvantages, we can only hope that you will candidly weigh and liberally construe the testimony which we shall be able to gather, and which we shall presently proceed to offer.

If you are satisfied, Gentlemen, that this defendant acted under the influence of delusion, or while in a condition of moral idiocy, (if I may so designate it,) or from an insane impulse in the commission of the offenses which are charged against him, you will find no difficulty in sympathizing with him and acquitting him, and it will be your duty unswervingly to do it. Such disposition as the Court may see fit to suggest, or as you may recommend, or as friends may advise, or as the law may authorize concerning the custody of the defendant in the event of his acquittal will be duly considered and properly appreciated by us. I am prepared to hear it said that it would be a very serious thing to allow this man to go forth to the community again. Gentlemen, remember that should he be acquitted he will go forth advertised. If he had a placard placed upon his breast and another upon his back displaying in broad letters the words, "INSANE FORGER," he could not be more thoroughly advertised than he will be by this trial. There will be no possibility of his doing any further mischief of this kind, for his hand is palsied by the notoriety of his case. But if the community of money-lenders will not be upon their guard now, we must believe that the Almighty has purposely made them in his wrath, as insane and deluded as Charles B. Huntington; and that Charles B. Huntington will again become, what we think he has been already, a humble instrument in the hands of Providence, to take from them their ill-gotten gains.*

Extract from the N. Y. Daily Times of Dec. 20th, 1856.

* Huntington's trial was resumed to-day, before an attentive audience.

The absence of any great excitement during the progress of the case thus far. and the comparatively brief period within which the whole evidence for the prosecution was compressed, had induced a very general belief that the trial would pass quietly and stupidly to its close. The illusion was dispelled, however, when this morning the junior counsel for the defendant proceeded to open his case and propound the the theory on which an acquittal was to be sought for at the hands of the jury. The assemblage was electrified; and as the idea of the defence assumed shape and consistency, the astonishment burst through the doors, spread all round the park, gathering strength as it expanded, until finally it assumed the full-blown proportions of a positive assertion that Huntington had been declared "Not guilty" on the ground of insanity.

* * * * * *

Mr. Bryan resumed his seat amid profound silence, everybody looking into his neighbor's face to catch a ray of sympathetic wonder.

Mr. Brady: If your Honor please, the labor of opening this branch of the defence devolved upon my learned associate, and I rise merely for the purpose of reserving to myself and stating to the Conrt in the form of a general proposition, so that you may be guided in reference to the testimony which may be produced, to announce upon what grounds this *whole* defence will rest. At the proper time I will present to the Court, in the form of written propositions, various instructions to show that there was no uttering of any paper that constituted a crime; that the prosecution had given no evidence of any intent upon the part of Huntington to defraud,—propositions, which, for my own part, if the case were my own, I would be content to rest this whole proceeding upon, and submit it to the judgment of the jury, feeling satisfied with any conclusion at which they might arrive. There was no intention at all to defraud Harbeck, and therefore no wrong could have been committed by Huntington. We will produce evidence to sustain this proposition; and if it shall appear that there were any transactions which make Harbeck and Huntington accomplices, no fraudulent intent can be alleged against Huntington. We claim further that the condition and character of this man's mind in reference to this particular species of act or acts was such, (and we think we shall be able to prove it by many witnesses, and establish it conclusively, by eminent medical testimony) that he is not criminally responsible.

The District Attorney rose and said he claimed from the Court as matter of law, that in every aspect in which those views, as developed in the opening for the defence, or as the evidence might be presented, whether as generally as they had been presented, or whether subdivided into the greatest possible number of details, that the defence proposed was inadmissible as evidence. At the proper time and at the very earliest moment, he would urge upon the Court, that whether the evidence which had been opened was to illustrate the intent to defraud or not, it was perfectly collateral and irrelevant; or if, in the second place, it was to be adduced to prove a species of mania of which he had never yet heard—and his reading had been, at various times, some what extensive, in the prosecution of his office, on that universal subject of mania—they would insist that there was no such mania known to science and to law, and therefore that such evidence could not be received.

Whilst Mr. Hall was addressing the Court, Mr. Brady got on his feet and charged Mr. Hall with being out of order—whereupon a debate sprang up between the gentlemen as to the regularity or irregularity of Mr. Hall's objection to the evidence at this time, when no witness had yet been offered to be examined.

Mr. Bryan: We propose to put the father of the accused on the stand and have him sworn as a witness.

The Court: The objection at this time is out of order. Let the witness be sworn.

Israel Huntington was then sworn and examined by Mr. Bryan.

Q. You are the father of the defendant? *A.* I am.

Q. Where was he born?

A. In Geneva, Ontario County, State of New York.

Q. Can you state when?

A. It would be difficult without reference to family records.

Q. About when? *A.* About 1821—22.

Q. What was your business?

A. My business through life has been pretty much the manufacturing and vending of cabinet ware. I have had other business connected with it, bnt that has been my principal business.

Q. How long did Charles remain in the family before he came to New York.

A. Until his majority. My impression is that that occurred in 1844.

Q. Will you state what kind of education he received?

The District Attorney:—I object to the question as collateral, irrelevant, and immaterial. It makes no difference in this case at all what education he received—whether he was educated in Latin, German, French, Italian, or for the State's prison, or any thing else. The question at issue is whether he forged with intent to defraud—whether he forged with intent to defraud Harbeck by the note set forth in the indictment.

Mr. Brady: I regret that this has occurred. I trust my friend does not desire to exhibit any feeling in this case, which I am happy to say has not been shown as yet.

The District Attorney: I have no feeling in the matter.

Mr. Brady: I have no doubt of it; but yet it seems to me that when you say that Huntington may have been educated in the German, Latin, or French languages, or educated for the State's prison, you do exhibit feeling, and that, too, strongly. It is in bad taste, and although the personal relations that I hold to my friends would never be injured by any thing that they may say in court, yet I hope that I never shall be guilty of such a breach of decorum or politeness.

The District Attorney: (After a brief conference with his associates.) All three of us concur that the expression I have just used is proper, relevant, and *in good taste.*

Mr. Brady: Then God forbid that I should imitate your example. You have intimated in the presence of an aged father, that he has educated his son for the State's prison. If that be in good taste, God forbid me from imitating such an example.

The Court thought the question was admissable in order that the defence might establish a basis for their theory of insanity.

Q (repeated). Will you state what kind of education he received—what was the character of his education generally?

A. His early education was something better than we should denominate a common school education. Commencing in a common school he finished his education in an academy. He had all the advantages under these circumstances that he could have.

Q. What was his moral training? Give the court and jury some information with reference to his moral training.

A. It may be relevant to remark, that he was a victim of disease from his earliest infancy, until nine or ten years of age. That disease showed itself at a very early age in the neck, and back part of the head, and ultimately communicated to the inside of the head. Hence, his early training was of a mild character. His erratic disposition was imputed to his disease. He was found to be exceedingly sensitive and nervous, sanguine and impulsive. These traits of his character were early developed, and parental authority not extended to check them in early infancy, on account of his

diseased and imbecile condition, physically. Afterwards, every effort was made that was possible, by his parents, to correct his unfortunate *penchant* to do that which was not strictly in accordance with moral principle. There seemed to be a difficulty in impressing him with a sense of moral obligation. When he was about ten years of age, he was kept closely in school, remained under the parental roof, and had all the mental and moral training his parents were capable of communicating. Ultimately he assisted me in my business, and remained at home until his majority—in all his subsequent years at home, not materially varying from the description of his early childhood, in his mental and moral disposition.

Q. I wish you to state something in regard to the position of his family before he left home, and their character as Christians, and the influence under which he was brought and trained in that respect. State generally.

A. It may be somewhat egotistical to reply to your question. Still I will attempt it. His family, in the first place, always maintained a fair position in society; almost on an equality with the first society where they resided.

The Court: Do you mean the father of the family?

A. Yes. His associations were with young people who belonged to such families. No low associations was he permitted to indulge in; nor do I know that he had any inclination to do so. His family were professors of religion. The religious duties which we are accustomed to suppose obligatory upon families, were usually, as I believe, observed by his parents and the older children. In one word, there was in his education, no lack of moral or religious training. To his parents he was very dutiful and respectful—in his nature peculiarly affectionate. He had a most deep and fixed regard for his natural relations in particular; and yet there was a disposition to do various things, which he knew were contrary to the principles inculcated upon him. He had a *penchant* to destroy almost every thing that came under his hands; and, although he must have known that severe chastisement would follow, yet that chastisement produced no result to change that disposition.

Q. Will you now state, Mr. Huntington, what you know with regard to any derangement among his ancestors, or any of the collaterals of his ancestors?

A. The family from which he is immediately derived were a hardy and healthful family, and have attained uncommon longevity for a long period back. No physical or mental disease that I know of ever attached to them hereditarily. Still (and this is the fact that I suppose the counsel aims at), an elder sister, after she was seventy-five years of age, if I mistake not, became deranged, and continued so until her death, some ten years after.

The Court: The prisoner's sister?

A. My own sister.

Mr. Bryan: The aunt of the defendant?

A. Yes; the aunt of my son. I might add that an elder brother, now between eighty and ninety, pretty well advanced towards the latter mark, is much in a similar situation. It has occurred since he was eighty years of age. I was going to make a remark in regard to an uncle, the brother of his mother. He was a young man who came from Dublin to this country, finely educated, and of great promise. He had friends and relatives here who appreciated him for a long time. He went into business here at

about the age of twenty-two or twenty-three—(this is historical, and I have learned it from the accounts of the family and friends, though I know the man personally, and am personally acquainted with his disease. At this early period I can only relate historically)—and he was obliged to abandon business under the advice of his friends, after demonstrating manifestly a degree of mental aberration that rendered him unfit to do business. The disease continued to acquire more and more dominion over him, and when he was about forty, I think, I made his first acquaintance. He resided then for a time in my family, until he became so much deranged, that it was necessary to make other provision for him. But he had a peculiar *penchant.* Acquisitiveness seemed to be a wonderful ingredient in the compound of his deranged mind. He would go into the streets (although every want was supplied, and there could have been no apprehension that his friends would not supply them); he would go into the streets, and in the most piteous and lamentable manner relate his forlorn and destitute condition, and beg any thing. It did not much matter what was given him, perhaps an hour afterwards, he would go round and distribute the same property promiscuously, without any apparent design. That is a brief history of that man, who, I believe, is yet alive. If so, he must be a man of sixty.

Q. How old are you? *A.* I am 76 Sir.

Cross-examined by Mr. Noyes.

Q. What was the disease of which you have spoken he had in his head in infancy?

A. It was scrofula that made its appearance when he was but two or three months old.

Q. When did it finally disappear?

A. It gradually wore off with his growth, Sir, and I think I have seen no vestige of it since he was nine or ten years old.

Q. Before that disease disappeared had he exhibited any of the tendencies to violence which you have spoken of?

A. It demonstrated itself when he was about two months old.

Q. You mean that his tendency to violence exhibited itself at two months old?

A. Not at two months old, but the earliest manifestations of his mental faculties in indescribable ways—the perversity of an infant.

Q. How long did that perversity last?

A. I remarked that these were the ruling traits of his character as long as he resided with his parents.

Q. Up to his majority? *A.* Yes, Sir.

Q. Will you state some of the facts which you remember, in which that tendency exhibited itself?

A. No, I cannot particularly. I will not trust my memory with any such facts.

Q. Was it in destroying objects of furniture?

A. Yes; as likely to be furniture as any thing else. I recollect whenever he had an opportunity of getting a quantity of nails, he would drive them into anything—all up—anywhere.

Q. Is that an unusual thing with boys?

A. I should think so. I never knew an instance.

Q. Do you remember any thing else, besides this wanton driving of nails?

A. Nothing more than I mentioned. It seemed impossible by chastisement to impress a sentiment of moral obligation upon him.

Q. Will you mention any instance that he exhibited this tendency to do wrong—to violence—besides the driving of the nails?

A. Oh, no! I don't know that I can, Sir.

Q. Did it exhibit itself in any tendency to crime? *A.* It did.

Q. How early?

A. He was accustomed to take things that did not belong to him.

Q. How early?

A. I cannot answer the question—very early—in his childhood.

Q. How long did that continue?

A. I cannot say. It is impossible for me to say.

Q. Did it continue as long as he remained with you?

A. I cannot say that I know of any overt act. I trusted him during my residence for two winters at Albany,* when he was 19 years of age, with the management of my business at home, with such directions as I could give him by correspondence.

Q. Did it exhibit itself then in any other thing, so far as crime is concerned, than the tendency to take things that did not belong him?

A. I think it did, in many things.

Q. Specify their general character?

A. I will relate a specific fact. At some period during his minority—I never knew at what age, for I did not discover it until he was 21—he so altered my handwriting in the family record as to make himself a year younger than he was.

Q. Do you know of any other instance of his altering, or forging paper?

A. I presume there was none; for if there had been any, I should have been likely to know it, I think.

Q. You have mentioned the alteration of the record, and the tendency to take property that did not belong to him. What else?

A. You could not rely upon his statements.

Q. He was not a truth-telling boy?

A. No. He would, without any apparent reason tell two different tales to two different persons in regard to the same facts, and there seemed to be no earthly reason why he should do so. Oftentimes in investigating these cases, there appeared to be no motive.

Q. He was not a truthful young man? *A.* He was not a truthful young man.

Q. You, of course, I have no doubt, endeavored in all these respects to check him, and do your duty towards him? *A.* Undoubtedly I did, Sir.

Q. Was there any thing else? *A.* I know of nothing else.

Q. I mean of the traits of wrong which you remember besides these three. *A.* None at all, that I remember.

Q. How long was he kept at school?

A. To that I can only answer generally—until he was about sixteen. I put him sometime about that age into my warerooms, or rather into one wareroom, for I had two, to attend to the sale of goods.

Q. About the age of sixteen you began teaching him your business in whole, or in part?

A. I think it was about that time that I attempted to learn him the trade. If I had had my views in regard to him as respects his education,

* As a member of the State Legislature.

he should have engaged in the study of the law after being educated at the academy.

Q. Was he educated in the Academy of Geneva? *A.* Yes.

Q. Under whom? *A.* I do not know.

Q. State how many children you have?

A. Do you mean present, or past?

Q. During the time of his boyhood?

A. During the time of his boyhood there were probably four or five children.

Q. Have you known much about his history since he left you?

A. Merely as history. Personally very little about it.

The Court, after the usual caution, then adjourned to Saturday, Dec'r 20th, at half-past 10 o'clock A. M.

Saturday Dec. 20th, 1856.—Pursuant to adjournment, the Court met at the appointed hour, when one of the jurors a gentleman of the Hebrew faith, (Morris L. Samuels), having by letter intimated to the Judge his unwillingness to serve on his (the juror's) Sabbath, his Honor determined to adjourn the Court until Monday morning next, the 22d instant.

Mr. Brady then rose and said, If the Court please, before we adjourn I desire to do what I consider devolves upon me in the capacity of counsel in relation to some particular circumstances of this case which, have appeared in two of the morning papers—the *Herald* and the *Times*. I have not had an opportunity to look at the other journals, and I do not know what disposition they have been pleased to make in their editorial offices of a trial in which I do not understand they are engaged in any way, except as guardians of the public interests.*

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* EXTRAORDINARY PHASE OF THE HUNTINGTON TRIAL.—Our criminal report, this morning, opens one of the most extraordinary chapters in the whole history of criminal jurisprudence. The counsel of HUNTINGTON, on trial for forgery, concede the fact of his guilt,—acknowledge every thing alleged in the indictment,—exaggerate to the greatest possible extent the criminal acts of their client,—and swell the amount of his forged paper to the incredible sum of *Twenty Millions of Dollars*,—for the purpose of setting up the plea of—*Insanity!*

We publish a verbatim report of the speech of the prisoner's counsel in entering upon this novel and most extraordinary line of defence. It has evidently been prepared with care, and is the result of deliberate and protracted consultation on the part of the eminent lawyers who are acting for the defence. Indeed, Mr. BRYAN states, in the speech, that this line of argument was adopted only as a last resort:—that, after studying the whole case, his counsel told HUNTINGTON that there was no possibility of his escape,—that the proof was too clear, and too overwhelming, to leave the remotest chance of an acquittal, and that the best thing that he could do would be to plead guilty, and throw himself on the mercy of the Court. This, however, he refused to do, and persisted in the declaration of his innocence, and of the certainty of his acquittal. His apparent insensibility to his position, and the strange pertinacity with which he denied his guilt, staggered his counsel, and finally led them to fall back upon a chance remark dropped by a witness and repeated by the Justice, that he believed HUNTINGTON was *crazy*. They have accordingly taken this as the line of their defence,—and will do every thing in their power to convince the Jury that he is not morally responsible for his acts.

It is confessed that HUNTINGTON's insanity is not of the species recognized in books of medical jurisprudence. A new kind of insanity is invented for his particular case. It is styled a *monomania for forgery*,—a species of insanity which impelled him to commit acts of forgery without any motive, except the desire to handle large sums

Your Honor has told this Jury, as is customary, that while they are empaneled upon this trial, and before they had heard all the evidence, that they should not converse with others out of the panel about it, nor even with each other. With that subject of course I do not interfere, and

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of money, and without taking any ordinary precautions to prevent discovery. A very curious and interesting narrative is given of HUNTINGTON's early life and entire career up to the present time, in which are included a great variety of particulars concerning his style of living,—the luxury of his furniture,—the speed of his horses, and the lavish scale of his expenditure generally. All this is intended to create the impression that he acted recklessly, without reflection, and in a way to indicate on his part an entire lack of prudence and common sense.

Everybody, of course, was taken by surprise upon hearing the declaration by the prisoner's counsel of the line of defence they should adopt. What is likely to be its success must be a matter of conjecture,—nor would it be quite proper, perhaps, at this stage of the proceedings, to canvass the merits of such a plea. It is very obvious, however, that if this new species of insanity is to obtain recognition, all such things as *crimes* will speedily disappear. We shall have monomania for murder, for theft, for rape, for arson, for every act indeed which is now deemed criminal, pleaded as a bar to conviction. The theory of the defence nullifies the idea of moral guilt, and resolves all crime into disease. Many speculative philosophers have indulged in the same views,— but they have never hitherto obtained recognition in our courts of justice.

The speech of HUNTINGTON's counsel will be found exceedingly interesting and worthy of perusal.—*From the N. Y. Daily Times of Dec.* 20 (*an Editorial.*)

HUNTINGTON'S TRIAL.—A NEW CODE OF MORALS.—The trial of Huntington, which is now in progress in the Court of Sessions, before Judge Capron, has assumed a most extraordinary character, on account of the line of defence which was presented yesterday by one of the counsel for the prisoner. The prosecution having proved, so far as it was possible to do so by a numerous array of competent witnesses, the charges of forgery of which Huntington stands accused, his counsel, instead of putting in a denial of the truth of those charges, boldly admits that he not only committed the forgeries specified in the particular indictment upon which he is now on trial, but that he committed a multitude of others. At the same time, however, that he makes this broad admission, he presents as the theory of the defence the plea of moral insanity, and boldly asserts that at the time Huntington committed those forgeries he was not morally accountable, being utterly unconscious that he was perpetrating a crime. In support of this theory he gave a biographical sketch of the prisoner from his boyhood, interspersed with numerous anecdotes of his youth, illustrative of his erratic character, and closing with an account of the various forgeries of his more mature years. All these forgeries, he contended, were but so many witnesses of his moral insanity, and he was prepared to prove by competent medical testimony that he is a monomaniac. Wm. H. Harbeck and Charles Belden, who have been on the stand, and whose evidence has appeared in our reports of the trial, are charged by the counsel as being the guilty parties, and with having employed Huntington as a tool—an innocent tool—in their illegal pecuniary transactions. And this extraordinary defence the counsel for the prisoner stated had not been adopted till after the most careful consideration, and till they were thoroughly convinced by reference to competent medical authority that it could be thoroughly sustained by the facts which they intend to present in evidence. Now, if Huntington's forgeries—amounting in the aggregate to more than half a million of dollars—were the result of moral insanity, all the bulls and bears in Wall street are morally insane. Robert Schuyler was afflicted with the same disease; the inmates of our State prisons are laboring under this terrible affliction, and every man who commits a crime can urge the same plea in his own defence. There is, in fact, no such thing as crime, and all who have been punished for its commission should have received the commiseration and sympathy of their judges, instead of suffering the penalties of the law. Under this code of morals, State prisons are entirely unnecessary; and the man who is guilty of murder or forgery, or arson, should not be held accountable under the law, because, forsooth, he is afflicted with moral insanity.—*From the N. Y. Herald, Dec. 20th*, 1856.

I never will in any case. I do not care what the jurors may do, in any case in which I am counsel. They may do as they please. Whatever may be their view of the defence, which is conducted by myself alone, or any gentlemen with whom I may be associated, when they are empanelled in a grave cause like this, involving a man's personal liberty upon the one hand, and public justice upon the other, I shall assume that they are men of unquestionable and unimpeachable integrity; and until the contrary is shown, it never has appeared to me in the whole course of my professional career—and I began to try causes at a very early period—that any man serving upon a jury in any cause in which I was engaged as counsel, was actuated in the verdict by any thing else than an honest conviction of its truth. I do not care how much they may talk about this trial, nor at what period they may do so. But still your Honor will not understand me by this as attempting to disapprove of the usual instruction and caution which all of us suppose is properly given to them by the Court. Another thing that has been customary, especially when there is a long recess,—as in this instance, from now until next Monday—is to instruct the Jury that they shall not peruse the comments made in the public newspapers, in regard to the trial in which they are engaged. *I* do not object to their doing that. I am perfectly willing that they shall read every article, in every newspaper in the city of New York, even though I have reason to believe, from what has already transpired, that the tone of those articles is directly against the accused. Indeed, it is always so. I never knew an instance—and I commenced to try criminal causes at the age of 21—I never knew an instance of any criminal being arraigned for any cause which excited public attention, when the press was not against him. I do not complain of it. It is in accordance with the principles of human nature that never will be altered; and I repeat it, that I do not want to prevent the Jury from having equal rights of enjoyment, intellectual and otherwise, that belong to them, as men and members of society. And I would rather invite them to read these articles; because I can hardly defend my client in the honest discharge of my duty as counsel, in courts of justice, where the law is supposed to have authority, against the evidence that may be introduced, against the law of the land, or rather the exposition of the law that I claim may have been erroneously made, and such things as properly belong to the trial of a cause. I have no control of any newspaper in the city. I have not the right nor power to have one single line of mine published in any one of them. I cannot defend my client against newspaper attacks; but when I come to sum up this case I will take up some of these articles, and I will select the most virulent and the most unjust, and read them to the Jury, for the purpose then of availing myself of the only chance I shall have of defence, not against what has been received in evidence, but what cannot fail possibly to have an injurious effect upon this cause. Now, Sir, for me to suppose that the time will come when editors of newspapers will abstain from commenting upon cases during their trial, is a gross absurdity. It will continue to be so until the end of time. The only request that I would make of those gentlemen is, that they will take care and be correct as to the facts.

Now, the *Herald* having expressed its opinion as to the conclusion of this case, I shall not discuss that, because I know that we shall never be able to convince any newspaper that we have the right upon our side. I shall not try. I do not think I shall convince the mass of the gentlemen

who will discuss these things in porter-houses, in counting rooms, in brokers' offices, or in work-shops, that we have the right in this case; but I think that if the Jury, upon the evidence and the law, come to the conclusion—they being the responsible tribunal, and they hearing the entire case—that Huntington is justly entitled to an acquittal, I shall have discharged all the duty that devolves upon me; and I think that will be the result of this case, if the rules of law that we suppose to be correct shall be enforced in our behalf, and if the evidence be already such as I understand it to be.

The *Times* states, this morning, "that the counsel for Huntington, on trial for forgery, concedes the fact of his guilt—acknowledges every thing alleged in the indictment." Does not your Honor, and every one who has been a witness of these proceedings, know that to be incorrect? After the District Attorney had opened his case, and my learned associate had concluded his remarks, did I not take the precaution to rise and tell your Honor distinctly, knowing the character of the public press in this city, that irrespective of all this defence, I would contend upon the case of the prosecution itself, that there was no proof of any intent to defraud at all, or no proof to defraud Harbeck? While I have a consciousness and calm distrust of my own opinion when I am influenced by zeal, I now repeat, that unless I seriously deceive myself, with the humble abilities that I possess, I am capable of demonstrating, conceding the truth of every word stated by all the witnesses for the prosecution, that their case has utterly failed. That is the pledge that I give, and as they have the last word upon the other side, if I offer any fallacy—if I mistake any fact by accident—if I present any sophism, they can expose it. If I am right in this, and if the jury, who care nothing for us as counsel—leaning to no person for sympathy, and against none from prejudice—come to the conclusion that I am correct in my views, then how unjust it is that these papers, in the very advance of all that is said, and before our proof is in, should publish a statement that the counsel have conceded the guilt of the accused. It is incorrect. I cannot believe for a moment that the gentleman who wrote this article intended to mistake anything willfully, but it is a very inaccurate idea of what occurred upon this trial; and we, who are in this court-room, all know it.

The next thing is a statement that this defence of insanity is entirely new, invented for the purposes of this trial, and not recognized by any book upon medical jurisprudence. That again is not correct; and when I come to discharge my duty, I will show from the highest writers upon medical jurisprudence, that there is nothing in the defence of Huntington that is not founded upon authenticated cases in the past, upon the history of criminal jurisprudence, and upon the laborious results of the most enlightened and scientific minds that have advanced this branch of learning and justice.

I must apologize to your Honor and the jury for so long detaining you; but I will conclude by inviting them to read every thing. I hope they will not be deprived of the satisfaction of reading every thing. I invite them if they see any thing in favor of Huntington not to read it, but read every thing against him, they knowing what the evidence is, and then we will see whether they have the moral courage to decide according to the evidence or not.

The District Attorney: As far as I represent the prosecution in matters of this kind, I am very happy that my friend to some extent, concedes one

of my political principles—freedom of speech and freedom of the press. That is the cardinal principle in my political belief; but while I concede the fact to be general, I by no means concede the conclusion that it results in favor of the prosecution. Quite the contrary. I believe ultimately that every thing begets sympathy for the prisoner, which sooner or later unfavorably results to the prosecution, on the principle that when four or five big men attack a little one, the sympathy always is with the latter. I concur with my learned friend when he says that his position is, that even conceding these notes were given, they were not illegally offered, and there was no intent to defraud. I have no doubt the jury also understand it, and it is my wish that the public press would abstain from commenting on this trial during its pendency. It is a mischief which results as much to the prejudice of of the prosecution, as it ever can to the prejudice of the defence.

The Court said: As far as myself am concerned, I don't want to read any thing in the public prints relative to the trial; and it is proper that these remarks should be made in the presence of the jury. There is propriety in the advice that the court gives the jury, when they are sitting as judges of facts in a criminal case, that may involve the life and liberty of citizens, not to talk themselves on the subject, or permit others to converse with them, relative to the case in its formative stage. There is no one thing that causes me so much uneasiness, or makes me feel so unhappy as to have a person approach me in reference to a case that has been on trial before me. I feel that there is an indelicacy in talking upon a subject disagreeable to my feelings; and I believe sensible jurors have more or less of the same feeling. There is no mind but what may be influenced by what is said upon a subject; although the person may not think of it at the time. A proposition may be made, or a word uttered, which will have an effect on the minds of the jurors; and, just so far as it has that effect, just to that extent it may prejudice him one way or another, and render him less capable of looking upon the facts as intelligibly as he would have done, if that lodgment had not been made in his mind. In reference to reading the papers, I will say a few words. The press in this city, as a general thing, intend to give a faithful record of all that passes in the courts of justice; but they sometimes give their own opinion in relation to a cause on trial, which excites public attention; which, really, I think it would be wiser and better, and would better promote the cause of "public justice" if they would omit to do. After the trial is finished, and the rights of the people and the prisoner have been determined and settled for ever, editors have a right to publish, print, and read their own views upon the subject, provided they do it with the courtesy that belongs to gentlemen. While the action is trying, and so long as an influence may be exerted by the press upon the jury, (presuming that they read what is written), I think editors would promote the cause of "public justice," and manifest a very commendable desire that strict justice should be administered without reference to private interests or feeling of partizans, if they would refrain from interspersing their history of the proceedings with any remarks of their own. It is admitted on all hands that the jury should not read those remarks and views for the purpose of being influenced by them; and I think it would be a mark of great wisdom, candor and fairness on the part of the jury, if they would refuse to read anything that may appear in newspapers relative to Huntington. If I were in their place, and desired to be entirely free from all kinds

of bias, I would not rely upon the evidence which was to guide me as it is reported in the public prints. My own experience satisfies me, that those papers, although with the best intention in the world to give a truthful and full recital of the testimony given by each witness, they don't succeed in doing so. They give the language of the witness a different turn, to convey sometimes (without intending it) a very different meaning from what is intended. If jurors read and can get over these statements in the papers, and the recital of the witnesses' evidence as given by the reporters, they may get a much stronger impression than that made by the witness himself in their presence, and hence they often will forget which is the true impression—the one got from the paper or from the witness. If jurors will not look at the newspapers, they will have nothing to guide them but their memory and the impressions made at the time. I have read the journals which contain the proceedings of Huntington's trial, and the testimony is not alike in two of them; the exact idea of the witness is not conveyed in the same way—there are material differences. It is not to be supposed for a moment that the reporters intended there should be any difference; they did the best they could; but it shows how dangerous it is for the jury at least, to be governed by either of the newspaper reporters. How much more prudent and safer it would be, not to read any of the editors' statements! If I were a juror, I would not do it.*

The Court then adjourned to Monday, Dec. 22d, at 10 o'clock, A. M.

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* THE HUNTINGTON TRIAL—THE COURT AND THE NEWSPAPER PRESS.—What a pity it is that the good old days of Star Chamber Courts could not be revived,—when the judges and the lawyers and the prisoner had it all to themselves,—when outside impertinence was excluded, and the gaping world was forced to content itself with the result, without comment upon the process or knowledge of the means by which it had been attained! Or if it be too much to hope for the restoration of so golden an era of jurisprudence as this, judges may still sigh for the immunity from criticism which JEFFREYS enjoyed, and fluent pleaders can make eloquent arguments on behalf of punishing the expression of an opinion while a case is pending, as a contempt of of court and a serious injury to all who may be concerned therein.

Unfortunately, however, even these badges of distinction are not likely to be again conferred upon our judicial tribunals. Things have changed wonderfully, in this respect as in many others, within a hundred years. Courts of law have been thrown open to the public gaze, and there is no man bold enough to propose to shut them again. Whenever a great issue of public interest is tried in a Court of justice, the public has a right to stand by and watch its progress; and every member of that great body corporate has a right to express his opinion upon each successive step that may be taken therein. The few whose leisure will allow them to do so, go in person. The vast multitude go by proxy. Their "miraculous organ" the PRESS goes and listens for them, and lays before them daily a report more or less complete of all that may have been said or done, which they would probably be desirous to know. And it enjoys, and often exercises on their behalf, the right of expressing its own opinions upon the conduct of the prisoner and his counsel—of those who prosecute in the name of the People, and even of that awful personage, the JUDGE himself.

This is the state of things which exists here in the nineteenth century. The liberty of discussion which is thus exercised is a public right, guaranteed by the Constitution, held by the Press as a portion of the public, and as in some sense its specialr epresentative, and conducive on the whole, beyond all doubt, to the public good. If it is abused, it can be punished. If facts are misstated, they can be corrected. If character is assailed, the assailant can be punished. But within the limits of the law, the right of every man in the community to listen to what the judge, the prisoner, the counsel or the jury, in any judicial trial, may say—to repeat it,

Monday, Dec. 22d, 1856: The Court met pursuant to adjournment; and, as an expression of sympathetic condolence with Wm. Curtis Noyes, Esquire, on the death of his daughter, the Court, on motion of Ex-Recorder Tallmadge, one of his associates, and with the concurrence of all who were engaged in the trial, adjourned to Tuesday morning at 10 o'clock.

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and to comment on it as he may see fit, is as perfect as any other right, and no more to be disputed or called in question than the right of property or of personal security. Yet every now and then it is pompously controverted in some court of justice, and the press which sees fit to exercise it is reprimanded, and held up to public censure, by counsel on the one side or the other, and sometimes by the presiding judge himself. The counsel is generally excusable for his course; for it is part of his plan,—it operates as an appeal *ad misericordiam*, and by enlisting sympathy on one side or the other is often made to help his case. The judge has usually no other motive for falling into the custom, than an amiable desire to augment his own importance and exhibit the extent and depth of his own profound wisdom.

In the Court of Sessions, on Saturday, the *Times* was hauled over the judicial coals for its remarks upon the defence of *insanity* set up in the case of Huntington on trial for forgery. Mr. BRADY, of the prisoner's counsel, while professedly conceding the right of the Press to discuss such matters, and declaring his own belief that such discussion would materially aid his client's case, complained that the *Times* had made two statements in regard to the subject which were erroneous,—first, in saying that the prisoner's counsel admitted the acts charged in the indictment,—secondly, in saying that the insanity which would be pleaded in defence was of a novel kind, unknown to medical jurisprudence. If this is so, the *Times* will most assuredly correct its error:—indeed it would be absurd to suppose that there was any intent to mis-state the case, as the same number of the *Times* contained a verbatim report of the eloquent speech of the prisoner's counsel. In that speech occurs the following paragraph, which we may be excused, perhaps, for having regarded as a virtual concession that *the acts* charged upon Huntington as forgery were actually committed by him.

"Gentlemen, let us look at the half-million now remaining out of the twenty millions of the forged paper to which I have alluded. I wish I had it all here, that you might see it,—it would fill a basket of respectable size. He forged it, too, while occupying the identical chair which the great railroad forger, Robert Schuyler, occupied. We shall be able to show you that some of this paper bore fictitious names—that it bore the names of high and low, from the errand boy in his office, to his poor lawyers, and from them up to your merchant princes. To use the slang phrases of the brokers, it ranged from 'sore noses' up to 'gilt edges.' We shall show you that the signatures were written without any attempt at imitation. And that the whole of it was so bungled, and that there was such a similarity in the lithographic blanks used, that it is wonderful how any man of sense could credit them for an instant. We shall show you that he signed the names of firms with frequent inaccuracy—sometimes leaving out a name, sometimes putting in an extra name, and sometimes reversing the order of the names. We shall show you that, in the course of his career of forgery, he has frequently signed names himself when he might have obtained the genuine signatures by merely asking for them. We shall show you that he has raised moneys on forged securities at the usurious rate of sixty per cent. per annum, and even at greater rates, and has lent out such moneys himself at the rate of only eighteen per cent., and even at legal rates. We shall show you that he has raised moneys on forged paper at an enormous rate, and has purchased large amounts of genuine paper at nine per cent. per annum; and that the next day, or very soon after purchasing such genuine paper, he has, in some instances, sold it at a discount double that rate, when he might readily have sold it for the same rate at which he bought; and we shall show you that he raised money on forged paper at like enormous rates, and, after investing it in unsalable stocks and other securities at full prices, he at once borrowed moneys on such new securities at the same ruinous interest; and that, during all these transactions, he kept no books, nor entries from

Tuesday, Dec. 23d, 1856.

Samuel Randel sworn. Examined by *Mr. Bryan.*

Q. What is your business? *A.* I am in no business at present.

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which the state of his affairs, or the character or extent of his dealings could be ascertained with any approach to accuracy."

This certainly looks like an admission that Huntington has committed "forgery" to a very large amount. And in a subsequent part of the same speech, it was declared that an acquittal would be claimed on the ground that these acts of forgery were committed under the influence of a *monomania*, which rendered Huntington morally irresponsible for his acts.

Judge Capron felt bound to follow Mr. Brady's complaints of the Press, by haranguing the jury upon the impropriety of reading any thing in the newspapers about the trial,—reports of evidence, comments, or anything else; by stigmatizing the reports of the Press in general as grossly inaccurate, and by graciously conceding that "after the trial is finished, and the rights of the people and the prisoner have been determined and settled forever, editors have a right to publish, print, and read their own views upon the subject, provided they do it with the courtesy that belongs to gentlemen." This is set forth as a judicial determination of the limits within which the liberty of the Press may be exercised. For ourselves, we respectfully repudiate the restriction. We claim, and shall at discretion exercise, the right of discussing any thing that may be said or done in any public court of law, upon any subject of public interest and importance. Whether Judge Capron or the Jury think it safe to read what we may deem it our duty to say, is their affair, not ours.

"This whole system of criminal trials is becoming a farce. Ignorance of the whole case is the first and last thing required of those who are to decide upon the question of guilt or innocence. No man must have formed any opinion, imbibed any impression, or read any account of the case. Utter ignorance of what may have been reported of it in the newspapers is insisted on: inability to read those papers, indeed, seems to constitute the perfection of a juryman. When, after a long chase, twelve such men have been captured and caged, the prisoner is set before them,—but is not allowed to be examined, or say a syllable, on the point which they are all anxious to ascertain, and which he is, perhaps, the only man who thoroughly understands. Witnesses are called—not so much to tell what they know, as to be subjected to the torturing arts of opposing lawyers,—whose business it is to browbeat, puzzle, confuse, and entice them into as many contradictory statements as possible,—by way of leading the jury to a clear and accurate knowledge of the facts. When this is all done, then the lawyers take the jury in hand,—each doing his utmost to refute what the other may have said, to draw off attention from the strong points of his opponent, to confuse the judgment of jurors, or by appeals to sympathy and prejudice to secure a verdict. The judge winds up the whole proceeding by a despairing attempt to disentangle the snarl which five or six days have been employed in weaving; and then the twelve are sent out to make what they can out of the hopeless mass of confusion into which the whole affair has been thrown.

"And throughout the whole, the constant and repeated warning of the judge is—don't read the newspapers! This may be essential to the harmony of the whole proceeding, for a perusal of these journals might offset and embarrass the efforts of counsel to confuse and confound the jury. It is safe, certainly, to let them alone;—and we trust that nobody connected with the Huntington trial will encounter the risk of reading what we have now had to say upon that subject."—*From the N. Y. Daily Times of Dec.* 22*d* (*an Editorial*).

THE PRESS ON PENDING TRIALS: The course of this journal was the object of animadversion, on Saturday, from Judge Capron and Mr. Counsel Brady, at present engaged in the Huntington case. The latter charged the *Herald* with expressing an opinion on the case, calculated to influence the Jury. To this it is sufficient answer to say that we did no such thing. Our remark was on a point of law, not on the facts of the case. What we said was that the theory set up by the counsel for the defence would, were it generally adopted, put an end to all criminal jurisprudence; for every culprit would show that he had committed the crime for which he was

Q. What has it been? *A.* Fancy goods formerly.

Q. Do you know the defendant? *A.* Yes, Sir.

Q. How long have you known him? *A.* About ten years.

Q. Where did you first become acquainted with him?

A. At No. 59 Vandam Street.

Q. Were you boarding in the same house? *A.* Yes, Sir.

Q. What was his occupation at that time? *A.* Furniture dealer.

Q. He was one of the firm of Huntington and Linsey? *A.* Yes.

Q. Were you acquainted with the affairs of that firm?

A. I was one of the assignees when they failed.

Q. About what time?

A. I think it was about the month of May, 1848.

Q. Did you close up the business? *A.* Yes.

Q. Who kept the books of that firm?

A Mr. Huntington was the one who was said to have kept them at that time.

Q. In what condition did you find those books?

A. There was no head or tail to them, as you might see; you could find out nothing by them.

Q. How did the affairs of that concern wind up?

A. We were able to make a dividend of ten per cent.

Q. What became of Mr. Huntington next? What did he do next?

A. Do you mean the next business that he was in?

Q. Yes? *A.* He went into Wall Street.

Q. What part of Wall Street?

A. I think it was in the back room of No. 17. It was either Nos. 17 or 19, in the rear of a book store.

Q. About when was that?

A. That was in one of the fall months, I think it was along near October or November.

Q. In what year?

A. 1848. The same fall that they failed in their business, in the spring in the furniture trade.

Q. What were his facilities for business?

A. He had no particular facilities that I know of at that time.

Q. Have you been acquainted with the operations, as a general thing, of the defendant, since he went into Wall Street at the time you spoke of?

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tried through the influence of intellectual aberration, or monomania. To that opinion we adhere; and if the Jury should acquit Huntington on the ground that though he committed forgeries, it was done through a monomania which he was unable to resist, we shall regard it as a very bad precedent for the future. Perhaps the counsel for the defence would serve their client's interests better, were they to rest their case on the non-utterance of the forged paper, instead of the state of mind of the prisoner Huntington.

In saying this we feel satisfied that we are not overstepping the bounds of courtesy which courts are used to claim from newspapers. Mr. Brady is very good in instructing us on the point. It happens that we made ourselves practically acquainted with the rights of the press with regard to pending cases, at a time when Mr. Brady's chief concern may have been about sugar plums and toys. Nor do we feel now that the rife warnings of this promising young lawyer, or the judicial admonitions of Judge Capron, are in any way necessary to keep us in the right path.

From the N. Y. Herald of Dec. 22d, 1856. (*An Editorial*).

A. I believe I have, Sir.

Q. Give us some general statement of the character and commencement of his operations?

A. The first operation of any size,—or meant to have been of any size, was I believe going into a cemetery affair at Baltimore. He got hold of that I believe through some means or other, and he made a proposition to myself, and my brother to go into it to carry out the scheme.

Q. Well, Sir, go on?

A. We went into it on our own views of it, which were a great deal less than his. He had very exaggerated views. For instance the thirty-five acre plot he thought he was going to make $1,200,000 out of.

Q. What was the result?

A. The result of it was that my brother and myself lost about $8,000.

Q. What became of the enterprise?

A. The enterprise failed altogether.

Q. Did he go into any other cemetery after that?

A. From that he proposed to open one in Buffalo, and my brother and myself were to furnish the funds. He held a small interest, and was to have some voice; but Mr. Clarke, who was a brother-in-law of Huntington, and resided at Buffalo, held the title of it. Mr. Huntington's views were so exaggerated that my brother thought we had better buy him off, so that he should have nothing at all to say. For instance,—he wanted to have five hundred Irishmen put into the place when ten were enough, and as many as could work to advantage—as many as were wanted there. So we bought him off, for we knew we could go on with our own judgment better than have him in it.

Q. Did these two cemetery projects occupy much of his time?

A. Not much, Sir, because he always lived here, and the subjects of the projects were located elsewhere. It did not occupy all of his time.

Q. Were they on his mind for a considerable length of time? *A.* Yes.

Q. Did you know of his having any interest in any other cemetery enterprise?

A. Just after that he tried to get one up on the upper end of this Island, which failed before it was started.

Q. Any other?

A. And then he dabbled somewhat in the New York Bay Cemetery, but to what extent, or how, I do not recollect now.

Q. Do you know any thing of the "Steam Laundry" operation?

A. Yes, Sir.

Q. Tell us about that?

A. I believe that was proposed to him, or told to him, by a person who had just come from the Isthmus, that such an establishment would be very profitable; and the very day that Huntington was spoken to about it he went and bought an engine.

Q. On the same day?

A. Yes, on the same day; and he ordered all the machinery, and asked me if I would go out there and attend to the money matters for him. I told him I would, but that I should not put in anything. I said I would go out there, and see to the financial part of the business—the paying out of the money—which I did.

Q. I do not care about knowing the precise amount, but about how much was invested in that undertaking? *A.* About $35,000.

Q. Cash? *A.* Yes, Sir.

Q. Did you know how much it cost to realize that amount of money, for the purpose of putting it into that concern?

A. I did not, Sir; but I found out afterwards—after I returned finally.

Q. Tell us how?

A. That he had paid as high as one per cent. a day for the money.

Q. What became of that enterprise?

A. It all went to "smash." I never realized a copper.

Q. What did he do with reference to that after it went to "smash," —resuscitate it, or any thing of that kind?

A. Just before I returned home, the last time, he wrote to me that he was going to get up a Stock Company for it, and he sent me one of the blank certificates of stock.

Q. Have you got that with you?

A. I believe I have, Sir. Here it is: (producing it.)

Q. What became of that undertaking?

A. I told him at first that that looked such a perfect farce upon the face of it that nobody would have any thing to do with it. None of it was ever issued or filled up that I know of.

Q. Now, after your return from the Isthmus from this Laundry enterprise—about what time was that?

A. That was in July, 1852.

Q. Then you had known him in Wall street from 1848 to 1852?

A. Yes.

Q. What did he take hold of then?

A. The "Washington Bank," was I think the next enterprise of any size.

Q. What was that character of the institution?

A. He got different of his creditors to take these bills on this Bank, and allowed them ten per cent. off of the face to be allowed on their indebtedness, and they to circulate them; and they were redeemed for a time, at three quarters of one per cent. here in New York. As he had no capital, or no more than a very few hundreds, if any at all, it could not last but a few days, and it did not last but a few days.

Q. Upon his principle of redemption and circulation, about how long could it last?

A. It could not last a week I should not think, for people began to get very "scary" about those banks at that time.

Q. Have you got specimens of any of those bills?

A. I have not got those of the Farmers and Merchants' Bank.

Q. Did you know of any other Bank?

A. He had another one named the "Citizens' Bank." That I do not know so much about.

Q. Have you specimens of those bills?

A. Yes (producing them).

Q. Do you know any thing else about his plan for circulating and redeeming the bills upon the Citizens' Bank?

A. No, Sir, I do not. I was sick while that was born and died. I was sick, and away from town.

Q. Was he indictment upon that *Farmers and Merchants' Bank* affair?

A. Yes, Sir, upon the *Farmers and Merchants'* affair he was.

Q. What became of him upon that charge?

A. He was held to bail after he was arrested.

Q. Do you know what became of the charge? Was he ever tried upon it?

A. No, Sir; that was the last that was ever heard of it, to my knowledge.

Q. Were the particulars of that affair published extensively in the newspapers at that time? *A.* Yes, Sir.

Q. Do you know any thing about the "Androscoggin Company?"

A. Yes.

Q. Tell us about that. How did it originate?

A. He went to Maine, to the legislature there.

Mr. Noyes: Was this after the Citizens' Bank affair?

A. Yes, Sir; and got a manufacturing charter through the legislature, with a clause in it that he supposed would allow banking.

Mr. Bryan: Do you recollect what the purport of that provision was?

A. The clause in the charter was this, as nearly as I recollect it: "The President and Treasurer shall have the power to make and discharge any notes, bills, or other evidences of debt, for the purposes of said company."

Q. What were the "purposes of said company"?

A. It was a charter for the purpose of manufacturing paper, linen, or any thing else that the company might see fit. It was so drawn up that you might manufacture any thing.

Q. Did that Company go into operation?

A. He went out to Maine, on the Little Androcsoggin, there to try and buy a piece of land to lay out lots which he had all mapped out upon the map, to realize something like $1,000,000, I think, and to build a factory on it to and sell the lots around it.

Mr. Noyes: *Q.* For this Company? *A.* Yes, Sir.

Mr. Bryan: *Q.* Where was he to get all the capital to do this business?

A. He had no capital as yet.

Q. What became of the Little Androscoggin?

A. Some of the bank officers in Maine heard that such bill or bills for such a company were about to be printed, and they stopped them; and all the associated banks of Boston, and the society that is organized there, for the suppression and detection of fraudulent institutions and counterfeit bank bills, "blew" it so hard that it died, and nothing more was done with it.

Q. What did Mr. Huntington take hold of next, do you recollect? When did he go to California?

A. In 1853 I think it was,—either the fall of 1853 or the spring of 1854. I do not recollect the date precisely.

Q. When did he return? *A.* He was gone about four months, I believe.

Q. In the spring of 1854? *A.* Yes, Sir.

Q. Do you know about what the condition of his affairs was when he returned from California, in regard to the amount of his indebtedness, about?

A. Something over $100,000.

Q. Did you hold any considerable amount of those claims?

A. Yes, Sir.

Q. Have you lost heavily by him during any of these operations?

A. Yes, Sir.

Q. To about what amount? I do not care about being very precise.

A. Something over $12,000, I should think. I never reckoned it all up.

Q. Did he apply to you for a release? *A.* Yes, Sir.

Q. Did you give it to him? *A.* Yes, Sir.

Q. About what time? *A.* In the fall of 1855.

Q Did his other creditors come into that arrangement?

A. I believe they did, Sir.

Mr. Bryan called on the prosecution to produce the release. The *District Attorney* asked Mr. Halsey, the assignee, whether it was in his possession; but that gentleman denied all knowledge of it.

Examination Resumed.

Q. Before he obtained the release, was he pressed very much by his creditors? *A.* No, Sir; not that I am aware of.

Q. Were they friendly towards him?

A. Yes, for all that I know of, Sir.

Q. Now, during all this time that you knew Mr. Huntington, you were friendly towards him? *A.* Yes, Sir.

Q. You were intimate with him? *A.* Yes, Sir.

Q. Did you know, during this trial, of his having committed forgery?

A. Yes, Sir.

Q. On what occasion, and whose names? *A.* Several times.

Q. State the names and occasions, and give us some particulars concerning them? *A.* The names, do you mean?

Q. Yes, the persons upon whom he forged? *A.* James C. Griffin.

Q. Who was he? *A.* He was a marble dealer. Also, Augustus L. Brown.

Q. Who was he? *A.* A lawyer. Also, Foster & Vanostrand.

Q. Who were they? *A.* Lumber dealers. Also, Bears & Bogart.

Q. Who were they? *A.* Liquor dealers, I believe; but I never was acquainted with them. And Westervelt and Bogart, and our own name.

Q. Can you think of any more, now? *A.* No, Sir.

Q. Well; when he committed these forgeries, what was done with him? *A.* There was nothing done with him, that I know of.

Q. What did the parties do whose names were forged? *A.* Nothing, that I know of, Sir.

Q. Did they enter any complaint against him? *A.* No, Sir.

Q. Did they give him up the paper, or what?

A. Well, they uniformly gave him up the paper, but when they did it I do not know, as I did not see it done.

Q. Do you know of their associating with him afterwards?

A. Yes, Sir.

Q. Did you associate with him afterwards—after he forged your name?

A. I did not know of his forging our name until within the past few months. It was an old affair, and I had never seen it.

Q. Well, you knew of his committing these old forgeries?

A. Yes, Sir.

Q. You associated with him after that?

A. Yes, Sir. I knew of those, about the time that they were done.

Q. Did you talk with him about it? *A.* Yes, Sir.

Q. And he admitted it? *A.* Yes, Sir.

Q. What impression did it make upon you?

A. It did not make much impression at all. He and I have been very intimate, and he often used to tell me many things, confidentially, as you may say. He would talk to me, almost as two brothers would who met together, who were very intimate, so that I knew about these things, which, otherwise, I might not have known.

Q. I asked you what impression it made upon you?

A. It never made any impression, that he ever intended to wrong the parties, from the circumstances under which it was done. I never heard the parties themselves, with whom I am acquainted, express that opinion, that I know of.

Mr. Noyes: Although this examination is very leading, we are not disposed to object to it. Still, I think it would be better, if the learned counsel would not make it quite so much so.

Mr. Bryan: I am aware that my examination is rather leading, but it is difficult to see how any mischief can grow out of it. We wish to hasten the introduction of our testimony, as fast as possible, and these things were all spoken of in my opening.

Examination continued.

Q. Were his prospects fluctuating? *A.* Yes, Sir.

Q. His prosperity, I mean? *A.* Yes, Sir.

Q. What was the general character and condition of his affairs, from time to time, with regard to prosperity?

A. Well, he would be up and he would be down.

Q. Frequently? *A.* Yes, he has several times.

Q. How often? *A.* Three or four times, to my knowledge.

Q. When was he married?

A. I do not recollect whether it was in 1848 or 1849. Somewhere along about that time.

Q. Are you acquainted with his family? *A.* Yes, Sir.

Q. Did you visit his family during any of the periods when he was in needy circumstances?

A. I have been acquainted with his family when he was.

Q. Did you visit his family so as to know their condition, when he was in needy circumstances?

A. Well, I have not visited his family very much. I used to call upon them when I went through that way.

Q. Well, you have known something of their condition? *A.* Yes, Sir.

Q. Do you recollect when Huntington lived in Brooklyn?

A. Yes, Sir.

Q. Whom did he live with? *A.* Mr. Moyes.

Q. Where was his family then?

A. A part of the time they were there; and, I believe, part of the time at his wife's father's.

Q. His father-in-law, Mr. Samuel Barry? *A.* Yes, Sir.

Q. What was his condition when he lived in Brooklyn?

A. He was low then in prospects,—poor. He often used to ask me to give him a little money—a quarter, a half-dollar, or a dollar, which I often used to do.

Q. Do you know of his being subject to great depression of spirits?

A. I knew he was, along about that time.

Q. Did you know anything of his contemplating self-destruction?

A. He told me that he had intended once to shoot himself, and that he had a pistol all ready.

Q. Do you know of his attempting any thing of the kind upon any other occasion? *A.* And also at another time of drowning himself *by accident.*

Q. Do you know for what object? *A.* He told me at that time, that if he did so his wife would have the insurance upon his life, because it would have been *accidental.*

Q. He lived in Brooklyn at that time?

A. He lived in Brooklyn at that time, and used to cross the South Ferry.

Q. What was the extent of those forgeries?

A. I do not exactly know the amount of them all.

Q. Well, about?

A. I should think it was something over $2,000. How much more than that I could not say.

Q. How much was the first one that you spoke of—Griffin's?

A. About $500.

Q. Do you know any thing of Foster's and Van Ostrand's?

A. I think that was about $1,000. I think there were two notes. It is so long ago that I do not recollect precisely the amounts.

Q. Westervelt's and Bogart's—how much was that? *A.* I do not know.

Q. How much was Brown and Corning's?

A. I do not know of that one.

Q. How much was Augustus L. Brown's?

A. I do not recollect just the amount. My impression is that one was $1,000 or so.

Q. These are the particular transactions to which you refer?

A. To which I refer—yes, Sir.

Q. Could he have got genuine paper of you, or of your firm, at the time of the forgery, or your firm name, if he had asked for it?

A. He could, if he had asked for it. That note was a small amount, say $250.

Q. Do you know any thing about his habits, as to frugality or prodigality, or any thing of that kind?

A. His habits were always to spend a good deal of money, if he had it.

Q. Can you relate any instance when he has obtained money for one object and used it for another—obtained it to relieve the wants of his family, and used it for some foolish expenditure? Do you know any instance of that kind?

A. I do not call to mind just now. I have known so many of such things, that I cannot remember one in particular.

Q. What were his habits as to sobriety?

A. He never used to drink enough to intoxicate himself, that I knew of, so as to be "tight."

Q. Was he a smoker? *A.* Yes, a very great smoker.

Q. How much did he smoke?

A. Ever since I recollect him, and that is for several years, he would smoke from fifteen to twenty-five cigars a day. I do not think I ever saw him without a cigar in his mouth at home, or anywhere else.

Q. What were his domestic habits?

A. He was always at home, when he was away from his office, to my knowledge, so that I often used to speak of it, that he seemed never to be absent from his home.

Q. Was he affectionate to his family?

A. Very, Sir, as far as I have ever seen.

Q. Did you ever know him to do any thing in the way of gaming?

A. No, Sir.

Q. Now, you were very intimate with him and knew all these secrets concerning him?

A. I was as intimate with him as any two persons, I suppose, could be together.

Q. And might have exposed him at any time? *A.* Yes.

Q. And had it in your power at any time to expose him and bring him before the authorities? *A.* Yes, Sir.

Q. Did any change take place in his feelings towards you?

A. There did last spring.

Q. In 1856? *A.* Yes, in 1856.

Q. Was there any reason for it?

A. I gave him a couple of drafts upon a party for, I believe, $600, and I learned something from a party after I had given them to him, that I thought I ought not to have given them to him, and I stopped the drafts; and it was for that reason that our friendly relations ceased.

Q. What was his condition then with reference to his prosperity?

A. I thought it was good then.

Q. Where was his office then? *A.* At No. 52 Wall street.

Q. Was he operating with Belden at that time?

A. Yes, Sir. He told me he was.

Q. Well, to what extent did these feelings of anger upon his part manifest themselves?

A. I suppose they were just as bitter against me then as we had been friendly before. Just about in the same proportion.

Q. Well, what did he do? What means did he resort to, to get satisfaction out of you?

A. He bought up claims, or had them bought up, and undertook to push them—to press them.

Q. Did he make you much trouble?

A. Yes, Sir, a great deal of trouble. More so than I ever had any idea he would or could.

Q. Even though those claims that you say he bought up or procured to be bought up, were valid and existing claims, were they collectable? *A.* Some of them were, and some were not.

Q. To what amount were those claims? *A.* That he procured?

Q. Yes?

A. Collectable and uncollectable, they are in the neighborhood of $10,000, I should think.

Q. What proportion of them was collectable? *A.* About half.

Q. If they were valid? *A.* If they were valid, Sir.

Q. Were they valid? *A.* Some were, and some were not.

Q. Had you exchanged releases with him?

A. No, I signed his release.

Q. You claimed that some of these demands came under the operation of some release which you had received from him? *A.* Yes, Sir.

Q. Whom did he get to buy the bulk of those claims?

A. Charles E. Scofield.

Q. What amount did he obtain?

A. I think about $9000. I do not now recollect.

Q. Do you know what he gave for them?—*A.* I do not.

Q. Do you know whom he bought them of?

A. He bought them of different persons. Some of James C. Griffin, some of Foster & Vanostrand, and some of William H. Dalton.

Q. From your acquaintance with Mr. Huntington, do you think him a business man?

A. I never knew of any occasion on which he showed any shrewdness whatever.

Q. How came you to continue your relations with him under these circumstances?

A. He always had the facility of making friends,—a little better than I could. I have been acquainted with his family, and connected partially in some business transactions with some members of his family.

Mr. Noyes: Whose family do you mean?—*A.* His family.

Q. What do you mean by his family?—*A.* His relatives.

Q. Upon which side?—*A.* Upon his side.

Mr. Bryan: This forged paper that you spoke of—What became of it?

A. I believe that it has all been given up to him.

Q. How long ago?

A. Last fall a year ago, I understand it was, Sir.

Cross-examined by Mr. Noyes.

Q. What is your business now?

A. I am not in any business just now.

Q. How long is it since you have been in any regular business?

A. A year or more, I should think it was.

Q. What was your regular business?

A. I had a small office in Wall-street, the last place.

Q. Where was that?—*A.* No. 21, second story.

Q. With any one?—*A.* No one known as being with me at the time.

Q. Were you really with any one who was not known?—*A.* Yes.

Q. Who was it? *A.* James C. Griffin.

Q. What was he? *A.* He was a marble dealer.

Q. The same one upon whom some of these forgeries were committed?

A. Yes, Sir.

Q. Where did he carry on the marble business?

Q. At that time I believe it was at the corner of Vestry and Washington streets.

Q. And he had an office in Wall street? *A.* He had no office there.

Q. You had? *A.* I had.

Q. What was your business, or your joint business when you had that office in Wall street?

A. Buying checks, or loaning upon checks, or some other securities.

Q. What did you loan? *A.* Money.

Q. Where did you get it from? *A.* Mr. Griffin furnished the means.

Q. How large an amount of money had you in your business to loan with? *A.* I used to vary.

Q. About how much in the aggregate? *A.* About $5000.

Q. How long did you carry on that business?

A. I was there about a year.

Q. That was all the money you had—the whole capital?

A. If I wanted more at any time, I used to go and get it.

Q. Where? *A.* Of Mr. Griffin.

Q. Had you any thing to do with Huntington during that time?

A. I loaned him some, and gave him some, and helped him some.

Q. Did you get any money from him? *A.* No, Sir.

Q. How did that business result, successful or otherwise?

A. Not very successful.

Q. Did you have any Bank notes that you loaned; were you connected with any bank in loaning money? Did you issue any bills of Banks of any sort? *A.* No, Sir.

Q. What were you doing before that?

A. I was not in any business, I believe, from the *time* that I sold out my fancy goods store, more than I was interested in carrying on some cemetery projects.

Q. Were you in any business after you got rid of your fancy store, except the cemeteries of which you have spoken, the steam laundry, and the banks?

A. I was not in those businesses myself, Sir—in the banks.

Q. Had you nothing to do with banks?

A. No, only I used some of the money.

Q. Were you in any business after you sold out your fancy store, until you got into that other sort of business?

A. I was engaged attending to my brother's interest in the cemetery.

Q. Had you any thing to do in the mean time, after you abandoned the fancy store business, except in connection with Huntington, until you went into Wall street—I mean those matters with which Huntington was connected?

A. Except that?

Q. Yes, Sir.

A. Oh, I have been in different kinds of business upon my own account.

Q. State, then, what it was.

A. I have had so many transactions that I cannot recall them to mind.

Q. Give us some general idea as to what your business was?

A. Whenever I could find business in which I could make any thing. I had a lot of stocks of different kinds that I got from trading in wild lands that I used to trade off.

Q. You had wild lands and stock in which you traded in connection with these cemetery matters?

A. Yes. When I was at the Isthmus I did nothing.

Q. What stocks had you that you were dealing in? What were they?

A. I had some Bay Cemetery stocks, and I had some Roger Williams' coal stock, and I had some Pennsylvania lands.

Q. What else?

A. Just let me think—I had a lot of old stock of baskets, and sold a tremendous great lot of them.

Q. Fancy baskets?

A. Yes, they were old stock.

Q. What else?

A. Nothing of any account. I used to get hold of one thing or another sometimes.

Q. This New York Bay Cemetery was the one that Huntington was concerned in, as you have mentioned? *A.* Yes.

Q. That was a scrip? *A.* Yes, it was intended to be a scrip.

Q. Did you not peddle that off, and try and get money for it; was not that part of your business?

A. I had to take that because I could not get any thing else.

Q. Whom did you get it of? *A.* Samuel Cameron.

Q. Your business was to sell it, and get as much as you could get out of it? *A.* Yes. I never tried it much.

Q. What was the Roger Williams Stock? *A.* It was coal stock.

Q. In Pennsylvania? *A.* No. In Connecticut or Rhode Island.

Q. Was it good for any thing?

A. It was reputed to be good; but like a great many other of these stocks, it was not.

Q. Who got it up, do you know? *A.* I do not.

Q. Had Huntington any thing to do with that?

A. Not that I know of.

Q. Did he traffic in that stock at all?

A. Not that I know of.

Q. You had some Pennsylvania lands. What were they?

A. I cannot tell you what they were, only that they were Pennsylvania wild lands.

Q. Did they belong to you?

A. To me and my brother.

Q. Did you peddle those off, exchange, or sell them?

A. I traded them off.

Q. Now, during all this time, had you any other business than that which you have described in connection with Huntington, and what you have mentioned just now upon the cross-examination?

A. I do not want you to understand that all these transactions that I had were transactions with Mr. Huntington.

Q. I do not so understand it.

A. I used to often sell notes, and often buy notes.

Q. Did you act as a note broker in Wall street?

A. Whenever a good note came along that I could buy and sell to another party, and make any thing by it, I never refused to do it.

Q. Where was your fancy trade business carried on?

A. At Nos. 241 and 418 Broadway.

Q. How long is it since it was given up?

A. In 1853 I think it was—in the spring of 1853.

Q. Did you fail? *A.* No, Sir.

Q. You discontinued business? *A.* Yes, sold it out.

Q. Now, you had known Huntington, as I understand you, for ten years—about ten years, and you were one of his assignees? *A.* Yes, Sir.

Q. And you simply found that his business did not wind up successfully, and that he only paid ten per cent.?

A. That is all, Sir. My brother and myself were preferred in that assignment for an amount of borrowed money.

Q. How much was that? *A.* $450.

Q. Did you have any demands against Huntington shortly before his arrest for this forgery? *A.* Do you mean *this* arrest?

Q. Yes. *A.* I signed his release. That is what cut me off.

Q. When did you sign his release?

A. I think it was about the second week in last December.

Q. A year ago?

A. About a year ago. The release purported to be on the 26th of November.

Q. Did you have a demand against him which you assigned to anybody?

A. I sold a demand against him before the release was made—before it was signed.

Q. When was that?

A. It was sometime last fall, along in October.

Q. This last fall?

A. No, a year ago. I am talking now before the release.

Q. What was the amount of that demand?

A. $3,600, $3,700, or $3,800.

Q. To whom did you sell? *A.* Amos S. Holbrooke.

Q. For how much? *A.* $100.

Q. You sold it then before the release for $100? *A.* Yes.

Q. At the time you signed the release, did Huntington know that you had sold it? *A.* No, Sir.

Q. Did you tell him that you had sold it? *A.* No, Sir.

Q. Did he suppose, at the time you signed the release, that you were releasing that demand that you sold?

A. I cannot say what he supposed. There was nothing said.

Q. You know how the matter is, Mr. Randel?

A. You asked me "what he supposed." I cannot tell what he supposed.

Q. Had you any other demand against him than the one you sold?

A. Yes, Sir.

Q. For how much?

A. Something in the neighborhood, I think it was, of $7,000 or $8,000.

Q. Have you, since his arrest, been a witness to prove that demand that you assigned against him before a Referee?

A. Yes, I have since the arrest. It was just after the arrest.

Q. Was that in a suit brought by Holbrooke against him? *A.* Yes.

Q. Now, Sir, when did you first discover that Huntington had committed any forgery? *A.* I believe I knew of it in 1852.

Q. Never before? *A.* Never before 1852. I do not recollect now.

Q. What forgery was that? *A.* Those that I have spoken of.

Q. I want to know which one?

A. I think the forgery upon James C. Griffin was the first one that I heard of.

Q. How did you learn it?

A. I do not recollect whether Griffin told me first about it, or whether Mr. Huntington did.

Q. You do not know who told you?

A. I do not recollect.

Q. That was in 1852?

A. That was in the fall or winter of 1852, I believe.

Q. Did you talk with Huntington about it?

A. I have often done so.

Q. Did you talk with him about that identical forgery?

A. I do not know that I have, specially about that identical one.

Q. When did you discover his next forgery?

A. I knew of all those I have referred to, except the one upon our own name, about the same time.

Q. About the same time in 1852? *A.* Yes.

Q. How did you learn them?

A. Well, as I say of that, I say of the others. I do not know whether it was Huntington told me first, or Mr. Griffin told me first.

Q. You cannot tell which? *A.* No.

Q. If it was Huntington, how came he to tell you that he had committed forgeries?

A. As I said, he used to tell me every thing. We used to be very intimate, indeed. He used to talk and say things—

Q. I suppose you had nothing of an equivalent sort to tell him, and why, then, should he give you his confidence about forgery?

A. I can only answer that by saying, that everybody knows that people are apt to have confidants; and he and I, as I said before, were as intimate as two brothers could be, and have been so until the last few months.

Q. Do you mean to say, that he, at any time, told you himself of those forgeries?

A. When we have been talking about matters and things, he has spoken to me about these forgeries.

Q. What did he tell you?

A. That is all that he did. He would allude to them—speak of them.

Q. What did he say?

A. I cannot recollect any particular conversation.

Q. He never told you that he had forged your own name?

A, No, I found that out, Sir.

Q. Are you able to tell what he said to you upon the subject of forgery? Give us the language as near as you can.

A. It is so long ago that I do not recollect.

Q. 1852 is not very long ago.

A. Four years. I have had my own business to attend to. I have had so many conversations with him upon different matters that I cannot repeat this particular one.

Q. Do you mean to say, that this was frequently the subject of conversation between you, and yet, that you cannot recollect any particular conversation, and what he told you?

A. I did not say that it was matter of very frequent conversation.

Q. How many conversations had you with him about it?

A. I think he spoke about it three, four, or five times.

Q. Can you tell any one of the conversations?

A. I cannot.

Q. Except that he admitted the forgeries?

A. Yes, and he alluded to them.

Q. Do you know whether he claimed money on the forged notes?

A. I believe he did, Sir, upon some of them.

Q. To what extent?

A. As I said before, I do not know.

Q. Do you mean to say that these forgeries of which you have spoken, amounted to only $2,000?

A. I think $2,000 and upwards. I can't say how much.

Q. Are those all the forgeries that you knew of?

A. All that I knew of definitely until what has been heard said since his late arrest.

Q. Those were all that you knew of? *A.* Yes, Sir.

Q. All that you had any suspicion of?

A. I do not know that I had any suspicion of any other at the time.

Q. I ask you generally, whether that amount of forgery that you have spoken of, was all that you had any suspicion about?

A. I believe it was, Sir.

Q. At any time?

A. I believe it is, Sir. I do not recollect any thing else now.

Q. Did he give you any reasons in these conversations for committing these forgeries?

A. No, Sir, I do not know that he did.

Q. Did he justify them in any way?

A. I do not think that he did.

Q. Did he make any apology for committing them?

A. I do not know that he did.

Q. Did he tell you in any way why he did it?

A. No, Sir; not that I know of.

Q. Did you rebuke him at all for the forgeries, or tell him what the consequences would be?

A. No, for I supposed that he knew that as well as I did.

Q. You did not say any thing to him about it?

A. No. He just alluded to it, that is all.

Q You did not speak of it to him as a reprehensible act at all?

A. I do not know but what I said to him that he ought to take care, or something of that kind.

Q. Did you have a conversation with him about the forgery of your own name? *A.* No, Sir.

Q. Did you ever?

A. I did this last spring, I think. I do not know whether I did or not.

Q. I want to know whether you had a conversation with him upon the forgeries committed upon yourselves?

A. I found that out since we have parted. It was a past due concern. I did not know of it until comparatively lately.

Q. The forged notes upon your firm were not paid by you?—never presented to you? *A.* No, Sir.

Q. Did you ever talk with him about the forgeries committed upon you?

A. I once said to him, "Charley, that is not my signature." I believe that was all that was said.

Q. What did he say to that?

A. He said, "Cannot you make a mistake upon your book?"

Q. Where was the note, when you said, "Charley, that is not my signature?" *A.* Where was it?

Q. Yes. *A.* It was in Foster & Vanostrand's hands.

Q. Were they present when you were talking about it? *A.* No.

Q. You were talking of it yourselves? *A.* Yes.

Q. Has he got credit with Foster and Vanostrand upon your name as forged? *A.* I do not know how that transaction was.

Q. Did you not know that your note was pledged there?

A. I did not know how that was; I knew they held some of our paper.

Q. Were you not sued upon that forged paper?

A. A suit was commenced.

Q. What became of the suit?

A. The suit, by an agreement between Mr. Foster and myself, was not proceeded with. I told him that I did not want to spend any money in law, and I told him that he could collect the money out of Huntington upon the whole batch.

Q. When was that? *A.* This last summer.

Q. Did you defend the suit upon the ground of forgery?

A. I did not defend it at all. I made an agreement with Mr. Foster, that I would not. I said, "Charley can pay that; you can get it out of him."

Q. Did Huntington ever tell you why he forged your name, or give you any justification or apology for it? *A.* No, Sir.

Q. You never made any complaint? *A.* No, Sir.

Q. And you do not know that anybody else ever did? *A.* No.

Q. Were these forgeries generally known, or were they confined to only a few people?

A. I do not know how generally they were known. I supposed that there was quite a number of people who did know of them.

Q. Did he make any promises about taking up the paper, and paying the amount that he had got?

A. The amount he had got upon what, Sir?

Q. Upon this forged paper.

A. Not that I know of.

Q. You do not know that he did?

A. No. You are asking me questions about things that were with other parties, of which I am ignorant.

Q. Did you permit that forged paper to go to judgment against you?

A. I did not mean to do it, but it went to judgment against me with some other paper that I had.

Q. Now, what amount of money did Huntington procure out of this Baltimore Cemetery matter?

A. I do not know, Sir, that he procured any thing.

Q. When was that affair started? In what year?

A. In the spring of 1849.

Q. That was while you were in business in Broadway? *A.* Yes.

Q. Before there was any difficulty in your own affairs? *A.* Yes, Sir.

Q. In what relation did you stand to that affair? Was it a company incorporated, or private?

A. I was to have the whole control of the property. It was to be deeded to me, and I was to have the whole control.

Q. Who started it? Who made the first suggestion?

A. A man by the name of Cameron.

Q. Where is he? *A.* I do not know.

Q. Who did he make it to? *A.* Mr. Huntington, I believe.

Q. Who made it to you? *A.* Mr. Huntington.

Q. You were then to have the entire control of the company? *A.* Yes.

Q. Was it to be a stock company, or a corporation?

A. The intention was to have incorporated it, as all such things have to be.

Q. It was intended to be incorporated? *A.* Yes.

Q. Did you take any steps to get it incorporated?

A. No, Sir. Because we did not get hold of the property.

Q. I want to know something about it. Did you negotiate for or buy the property?

A. A contract was made that the property should be put in my possession, and the man who made that contract was not able to fulfill it.

Q. Who was that? *A.* Samuel Cameron.

Q. Did you get up certificates of stock. I mean such paper as *this?* (showing a certificate of the N. Y. Bay Cemetery.)

A. I am trying to think whether there was or not. I believe there was not.

Q. Do you say that positively?

A. I cannot recollect whether there was or not.

Q. Did you dispose of any rights in it? *A.* Did I?

Q. Any of you? *A.* I did not.

Q. Did anybody, to your knowledge or belief?

A. There was a right disposed of to me and my brother.

Q. To anybody else? *A.* Not that I know of.

Q. What was Cameron's interest in it?

A. He had an interest in it, but what it was now I really forget. I could tell by referring to my memoranda.

Q. What was Huntington's interest?

A. He was to have an eighth, I think it was.

Q. How many parties were concerned in it; besides Cameron, Huntington, yourself, and your brother?

A. A man by the name of Charles F. Mayer.

Q. Is Mayer the gentleman at Baltimore? *A.* Yes, Sir.

Q. Anybody else?

A. A man by the name of Frederick Bull, I think it was.

Q. You lost $8,000 in it? *A.* Yes.

Q. How did you lose it?

A. I bought the interest of Mr. Cameron. He pretended to own a large portion of the whole property.

Q. Of the land necessary for the Cemetery?

A. Yes, and that he had a title to it, and he pretended to own it, and that he was able to give a clear title to it.

Q. Do you mean to say that you and your brother paid him $8,000?

A. If you will wait I will tell you.

Q. Go on.

A. He pretended to have it in his control, and we were to give him $8,000 for a certain interest in it.

Q. Who do you mean by "we?"

A. When I say "we," I mean my brother and myself. I always say "we," when I speak of ourselves. We were to give him notes for it, and he represented that he must have those notes to enable him to put the property into my possession; and any one who knows Mr. Cameron can tell how plausible he is in all his movements.

Q. As plausible as Huntington?

A. Well, he is a different kind of man. We gave him our notes, and he ultimately proved unable to do any thing like what he said he could. He kept putting us off, and putting us off, and when we found that we had no reason to ever believe that he could put us in possession of the property, we sued him for obtaining our notes under false pretenses, and we had him arrested, and he turned over to us the Bay Cemetery stock, which was the only thing that we could get out of him. We did not want to lock him up. We wanted to get something for our losses, and he turned over to us a lot of this Bay Cemetery Stock, which accounts for the way we had it.

Q. You gave your notes, then, in this transaction? *A.* Yes.

Q. Did you ever pay those notes? *A.* Yes.

Q. To what amount?

A. Some of the notes we paid in full, some we compromised at the best rates we could—something in the neighborhood of $7,000.

Q. Did Huntington pay any thing in the transaction to Cameron?

A. I do not know that he did.

Q. Did he give any notes?

A. I do not know that he did.

Q. Did he make any money out of it by selling rights, or in any other way to your knowledge? *A.* I do not know that he did.

Q. You do not know that he ever advanced a dollar to it?

A. I do not know that he did.

Q. How long was that affair in operation before it exploded?

A. It never was in operation, because it never got to the first step.

Q. How long was it in progress before you ascertained that it was good for nothing?

A. I suppose it was three months that Cameron kept making different representations.

Q. Huntington's entire connection with it, then, was, that he was to have one-eighth, if the thing went on?

A. Yes, Sir. He was to have some control or voice in it.

Q. Was he to be an officer of the company?

A. He was to have a voice.

Q. What officer was he to be?

A. It had not got as far as that.

Q. Where did you expect to get the act of incorporation?

A. From the legislature.

Q. Of Maryland, or this State?

A. Maryland.

Q. How long after that was it that the Buffalo Cemetery was started?

A. That was started in 1849.

Q. Immediately afterwards?

A. About the same time.

Q. Who started that? Who suggested it?

A. Huntington was the first person to name it to me.

Q. When he named it to you, what were the arrangements? What wass id?

A. I cannot recollect the conversation at that time.

Q. Who was to buy the land?

A. My brother and myself were to furnish the means to buy the land.

Q. Who was to assist in the purchase at Buffalo?

A. When the thing was first spoken of, Mr. Clarke was expected to do it.

Q. I think you said that he was the brother-in-law of Huntington?

A. Yes.

Q. What interest was Huntington to have in it, you furnishing the means? *A.* One-fourth.

Q. What interest was any other person to have?

A. I do not know that I ought to answer all these questions about our own business. It is irrelevant entirely to the point.

Q. We all happen to differ with you about that, I believe. I ask you what other persons were concerned in that matter besides Huntington, your brother and yourself? Huntington was to have one-fourth, how much were you to have? *A.* My brother and I were to have a fourth.

Q. Who was to have the other half?

A. I think that the first intimation was that my brother and I were to have three-fourths.

Q. You reduced your share to a quarter just now?

A. There were several turns made in it from the time it was first spoken of. You asked me about the same conversation?

Q. Yes. *A.* Mr. Huntington was to have a fourth.

Q. How much was your brother and yourself to have finally? I mean when you settled?

A. I think we were to have a half—Huntington a quarter, and Mr. Clarke a quarter.

Q. Now, were any other persons concerned with you in that besides Huntington and Clarke? *A.* There were afterwards, Sir.

Q. Will you state who? *A.* Mr. Griffin.

Q. Is that the marble dealer whose name was forged by Huntington?

A. Yes.

Q. How much was he to have? *A.* He was to have a fourth.

Q. Was there anybody else besides Griffin?

A. There was nobody else then.

Q. Who was to furnish Griffin his quarter—which one of you; or, in other words, whose share was to be reduced so as to give him a quarter?

A. I really forget how it was done at the time. There were several transactions between Griffin, my brother, and myself, and we had been connected in different ways so much with one thing and another, that I really forget how it was done exactly.

Q. You manifested some reluctance a moment ago to mention names. Were there any other names that you did not wish to disclose?

A. I objected to do so, because I did not care to tell my own business, independent of any thing that Huntington had to do with it. If it would do any good for you to know it, there is no harm in it that I know of.

Q. Did the Buffalo cemetery go into operation? *A.* It did.

Q. Was it incorporated? *A.* It was.

Q. Who procured it to be incorporated? *A.* Mr. Clarke.

Q. Is it not now in successful operation? *A.* Somewhat so, Sir.

Q. Have you not understood that it has been somewhat profitable?

A. It has been.

Q. Under whose management chiefly?

A. Mr. Clarke has had the principal management of it.

Q. Did you retain your interest in it? *A.* Yes, Sir.

Q. Do you still?

A. I disposed of a part of my interest once, and then bought it back again. My brother and myself bought Mr. Griffin's interest.

Q. Did Huntington's interest remain in it?

A. No, Sir. We bought Huntington off—my brother and myself.

Q. What did you give him? *A.* We gave him $3,500, I think.

Q. How much did he make by the operation?

A. He was not at any great expense.

Q. Do you mean that he made pretty much all of the $3,500?

A. I suppose that he made pretty nearly all, for he was not at much expense.

Q. When was it that you bought him out? How long after the scheme started? *A.* Two or three years I think it was.

Q. Was there a scrip of that stock?—a simple incorporation for a Cemetery Company under the General Law?

A. It was not incorporated for two or three years.

Q. When was it that Huntington wanted to put on 500 Irishmen, as you said? *A.* On first opening the ground.

Q. How many acres were there? *A.* 80 acres.

Q. Did he not want to put on 500 men so as to operate it, and get it into use suddenly,—rapidly, and were you not opposed to his doing it as fast as he wished?

A. I was opposed to it, because I knew that it was impracticable. If it had been put into the market directly, it would not have gone well.

Q. Did he not want to go on with vigor, so that the lots would sell well, and you opposed it?

A. I opposed it on the ground that it would not be expedient. He thought he could sell out the cemetery in a year.

Q. How many men did you put on?

A. I think the greatest number was ten or twelve at a trial.

Q. Do you know what the whole amount of sales has amounted to?

A. I do not.

Q. How much did you make out of it? *A.* I do not know that.

Q. Have you made a good deal?

A. Not a great deal. We wanted to get Huntington off, and we gave him more than we would have given to another person.

Q. How much did you make out of it? *A.* I cannot say.

Q. As near as you can judge now?

A. Since it has been opened, it has made some $13,000 or $14,000 a year.

Q. That is not telling me how much you made? *A.* I cannot tell.

Q. It has been a successful thing, however?

A. It has been successful, but not very.

Q. Is Mr. Clarke here? *A.* Yes, Sir.

The Court here took a recess.

Cross-Examination resumed.

Q. You said that after this Buffalo matter, Huntington attempted to get up a cemetery upon this Island? *A.* Yes, Sir.

Q. What was that?

A. It was one, I think, of about thirty acres, upon the upper end of the Island.

Q. About what street?

A. At 180th street, or near there. I think it was about that street; it was somewhere in that neighborhood.

Q. Who was concerned with him in that?

A. I forget the party who owned the land at the time. I had nothing to do with it.

Q. You had nothing to do with it? *A.* No.

Q. Who had? *A.* A man by the name of Clarke.

Q. What Clarke is that? *A.* Lewis E. Clarke.

Q. Who else? *A.* He was the man who was to furnish the means for it.

Q. Who suggested that enterprise?

A. I believe it was Mr. Huntington.

Q. Was that before, or after he had sold out to you his interest in the Buffalo Cemetery? *A.* That was before.

Q. Was that to be an Incorporation?

A. I do not know as I ever knew whether it was or not. Everybody took it for granted that it was to be.

Q To what extent did it go?

A. There was $1000 paid for the contract. *Q.* For the land?

A. For the land, on account of the purchase, and that is as far as it went.

Q. Who paid that $1000? *A.* I believe it was paid by Mr. Clarke.

Q. Did Huntington ever pay any thing, to your knowledge?

A. I do not know how that was.

Q. He never did, to your knowledge? *A.* Not to my knowledge.

Q. Why did that scheme fall through?

A. The reason was that it was so large and heavy, that the parties engaged in it could not wield it.

Q. It could not be managed? *A.* It could not be managed.

Q. What else was Huntington doing, during all this time? What business was he carrying on here in town?

A. He went under the name of a Broker.

Q. Where? *A.* At No. 29 Wall Street.

Q. He had a Broker's office nominally at No. 29 Wall Street?

A. Yes.

Q. Was he carrying on any business of brokerage?

A. I do not know what little operations or things he might have done.

Q. You said that he dabbled in New York Bay Cemetery stock a little?

A. I know he had something to do with it.

Q. What do you mean by his dabbling in that cemetery?

A. I meant that he got some of the stock.

Q. Do you know where he got it?

A. I do not. Do you know how much he had of it?

A. I do not Sir.

Q. Is that the scrip of that stock? (handing it.) *A.* Yes, Sir.

Q. Where is that Cemetery?

A. The land lay over between Jersey City and Bergen Point.

Q. What has become of this scheme?

A. That all went through. The mortgage was foreclosed, and it turned under. It died out, and a new company was formed.

Q. Do you know whether he paid any money towards that?

A. I do not.

Q. All you know is that he got the stock which he traded off?

A. I do not say that he traded it off—I know he had some to trade. I do not knowhow much he had, or where he got it from.

Q. Had he any thing to do with getting up this New York Bay Cemetery Company?

A. I do not know that he had.

Q. Had you any thing to do with getting it up? *A.* No.

Q. You went with it? *A.* No, Sir.

Q. You had some of it?

A. I had some of the stock. Cameron turned it out to me.

Q. Do you know who J. Belknap Smith, the Secretary, and George Wood, the Treasurer, are? *A.* I do not know them personally.

Q. Where do they live? *A.* In town somewhere.

Q. In reference, then, to that Company you do not know what Huntington had to do with it, except that he had some of the stock?

A. That is all, Sir.

Q. Now, is this all your knowledge of Huntington's participation in any cemetery company?

A. I believe I have stated all.

Q. If you have not—state it.

A. I think I have stated it all. I do not recollect any thing further.

Q. Now, when was it that this Steam Laundry Company was started?

A. That was in, I think, June, 1851. I think it was, if I remember the date right.

Q. That was suggested, you say, to him by a person who came from California, crossing the Isthmus?

A. I believe it was. I believe the party had been there for a short time.

Q. Been at the Isthmus?—*A.* Yes.

Q. Who was he? What was his name?—*A.* Wm. H. Clarke.

Q. Was he a brother of Lewis E. Clarke?—*A.* Yes.

Q. Any relation to Clarke at Buffalo?—*A.* No.

Q. Where is he?—*A.* I do not know where he is now.

Q. How long is it since he left the city?

A. I do not know but what he is in the city now. I met him in the street the other day.

Q. Who were engaged in that besides Wm. H. Clarke and yourself?

A. Clarke was not in it that I know.

Q. Who besides Huntington and yourself?

A. Nobody that I know of. I was only acting as his agent.

Q. Was that scheme Huntington's alone?

A. I believe it was. The profit was to be his, and the loss also. I was

to get a living, if it did not pay, and if it did pay, I was to have one half of what it paid; but I was not to run any risk, or put in any capital.

Q. Do you know of your own knowledge that the first day it was suggested to Huntington, he bought the engine and machinery?

A. I do, Sir, I think; because I went into his office just as Wm. H. Clarke went out after suggesting it, and in the afternoon of the same day I went with him to the place where the engine was. I heard him talk about the price of it.

Q. Do you know if he bought it?

A. As near as I recollect the bargain was consummated that day.

Q. What was the whole expenditure for the engine and apparatus?

A. The engine alone, I think, was $250. It was a second-hand engine —had been running about three years. The whole, as near as I recollect, so far as made here, cost about $3000—the engine, boiler, and laundry machinery.

Q. Who paid for it? *A.* He did. It was supposed he did.

Q. Do you know how he procured the money to pay for it?

A. I do not. He said he was worth some money at that time. I asked him if he had money to go into it.

Q. From whom did he purchase that engine? *A.* From Rodman.

Q. Where did he get the money to put into that concern?

A. It was not all got in one day, or paid in one day. I did not know how he got it.

Q. Do you know now?

A. I only know by suspicions. I supposed when he went into it he was worth some thousands of dollars—enough to carry the thing through. I told him that I would not furnish any funds whatever for it. Every thing went on, and was paid up to the time I came away.

Q. I ask you if you know now how he acquired means to put into it?

A. I do not know.

Q. What do you know about it?

A. He said that he was worth a certain amount—I think $10,000—at the time. I thought that very likely, that he was, if not more, from the business he had been in previous to that.

Q. What business was that?

A. He was loaning money on checks to Tom, Dick and Harry,—any one that came along that was supposed to be good.

Q. You say you had your suspicions. What do yon know of the subject of his getting the money to put into that concern?

A. Well, he used to change notes with parties, and raise money in that way,—get notes discounted. The drafts I made on him were paid.

Q. Do you know whether those funds, or any part of them, were obtained on forged paper? *A.* I do not.

Q. Have you any reason to believe so? *A.* I have not.

Q. Those transactions, as far as you know, were legitimate, honest transactions?

A. They were, so far as I know.

Q. When he told you he was worth $10,000, did you believe him?

A. I thought he ought to be, from what he was doing.

Q. Then you believed him? *A.* I believed him.

Q. How much do you know, of your own knowledge, that he put into that Laundry concern?

A. I paid out on the Isthmus there, I think over $15,000 that I drew on him for by letters of credit. Then I know that there were other things paid here.

Q. How long did you continue the business there?

A. I was out there altogether about nine months.

Q. Carrying on business?

A. Getting the machinery up. I did not get it into successful operation.

Q. What was the matter?

A. Well, almost every conceivable thing was the matter. When I first went there, there was some part of the machinery left behind, and you could not get any thing there; if a rivet was missing, you would have to send here for it.

Q. Did you get it into operation, so that you commenced the laundry business? *A.* Yes.

Q. And how long did you continue that business?

A. A few days—I should think perhaps two weeks.

Q. What did you abandon it for?

A. Because it was so sickly, I would not stay there. I saw by my experience that it could never be carried on, for you could not depend upon a person's life twenty-four hours.

Q. You had not tried it long enough to know whether it could be successful?

A. I considered it could not be successful, from what I saw. It was situated about two miles out of town. If I went into the town in the morning about business, when I returned in a couple of hours, I found all the men on their backs, sick with the Panama fever.

Q. During the time you continued this matter at Panama, who was interested in it besides Huntington and yourself?

A. No one, that I know of.

Q. What did you do with the machinery and apparatus?

A. I left them there.

Q. Now *that* you say is one of the stock certificates (presenting paper)?

A. That is one—in blank.

Q. Who were the officers? *A.* I do not know.

Q. Was it incorporated? *A.* Not to my knowledge.

Q. The capital is stated to be $75,000: shares of $50 each,—"part of the net proceeds and of the property of the company."—Had the company any property except the machinery and apparatus?

A. Not that I know of.

Q. Was there any capital of $75,000? *A.* Not that I know of.

Q. Who signed these?

A. I do not know that they were ever signed. That was one that was sent to me on the Isthmus. It was the only one sent to me.

Q. So there was no capital, to your knowledge?

A. Not to my knowledge.

Q. You came home in July 1852?

A. Yes. I was out there about 9 months. That is, I was not there all the time. I was back and forwards three times, I think.

Q. What was Huntington doing here while you were gone?

A. I believe he was in the same business that he was before I went. His office was No. 29 Wall street.

Q. Where is Griffin? *A.* Here in the marble trade.

Q. Had Huntington any connection with him?

A. Griffin used to discount paper for him. How much I do not know.

Q. What connection had you with the Farmers and Mechanics' Bank of Georgetown? *A.* None at all.

Q. Who got it up? *A.* Mr. Huntington.

Q. Who suggested it to him? *A.* I do not know.

Q. How is it that you know so much about it?

A. Because he used to write to me.

Q. Who was connected with him in that affair?

A. I do not know that there was any one—that is, connected with the profit and loss?

Q. No, in getting it up?

A. I do not know, Sir; I was not in town at the time of that.

Q. Had that affair any capital? *A.* Not that I know of.

Q. Was there really any bank incorporation?

A. Not that I know of.

Q. What did that consist of, then?

A. Issuing notes in Wall street, and redeeming them—like other banks.

Q. Yes; but other banks have some capital. I observe that "J. Belknap Smith" is signed to the New-York Bay Cemetery scrip. Had he any thing to do with this bank of Georgetown? *A.* I do not know.

Q. Was he nominally the President of that bank?

A. It is so long since I saw one of those bills that I cannot say. I would not know J. Belknap Smith now, it is so long since I have seen him.

Q. Who was the professed President and Cashier of that Bank of Georgetown? *A.* I cannot say.

Q. Do you know who were concerned in that with Huntington?

A. I do not know that there was any one.

Q. Who was his redeeming agent of those bills in Wall street?

A. I think a man named Patmor was, at one time.

Q. Who issued the bills?

A. I believe Mr. Huntington, originally.

Q. Did you circulate any of them? *A.* I had a few of them.

Q. How many, and of what amount?

A. In the neighborhood of $60. I received them from Mr. Huntington when I was sick, up in the country. I sent to know if he could not send me a little money, and he sent me some of that money.

Q. Did you circulate it? *A.* I did.

Q. Did you know it was fictitious?

A. I did not. Afterwards I redeemed it, when it was sent back.

Q. Did you have any suspicion, when he sent it to you, that it was spurious? *A.* No, Sir.

Q. This was after you had known of his having forged your name?

A. No, Sir, it was before. I redeemed that money afterwards. It did not get out of the neighborhood.

Q. Who else circulated the money for him, do you know?

A. I believe Mr. Griffin had some. Foster & Vanostrand had some. John B. Borst had some.

Q. How much did he get out? *A.* I do not know, Sir.

Q. Who else? *A.* Mr. Hadden had some.

Q. Did he get out several thousand dollars? *A.* I do not know, Sir.

Q. How long was that banking concern continued before it blew up.

A. I do not recollect.

Q. From the time the scheme was first started, until it blew up?

A. I do not recollect. It was not much more than a month.

Q. Are *these* some of the bills? (Presenting bills.)

A. They look like them. I do not think I ever had any of *that* denomination. ($1.) Those threes look like them.

Q. How are they signed?

A. H. Freeman, President, and G. H. Smith, Cashier.

Q. Do you know them?

A. I have seen Mr. Freeman, but do not know Smith.

Q. Do you know who got the plate engraved for those bills?

A. Not of my own knowledge.

Q. What do you know about it?

A. Huntington told me that he did.

Q. Did he tell you who was engraver?

A. No, Sir, I think the bill shows that.

Q. How soon after you had those $60 sent to you in this money did you discover that this was a bogus bank?

A. I did not know much about it until I got home—that was, I believe, after the thing went down.

Q. And you say you had no suspicion whatever that this was not a fair concern before that time?

A. I do not think I had any suspicion about it.

Q. Do you know that there was no other person than Huntington, concerned in it?

A. I did not know of the circumstances at the time, as they transpired.

Q. How do you know the terms on which he circulated the money?

A. I have been told that since, Huntington and other parties told me.

Q. You did not know how he circulated that money of your own knowledge? *A.* I did not. I was sick and out of town.

Q. How did Huntington tell you that he circulated the money?

A. He told me that he would take $500 to give an old creditor, for which he would be allowed $450. That he would give ten per cent. off, with the agreement to circulate, and apply it to their debt, or give credit for it.

Q. Did he tell you that there was no such bank, and no such capital?

A. I do not know that he did.

Q. How did you find it out?

A. There were so many circumstances transpiring at that time that I cannot tell all. I think he made an arrangement for some one, to go to Georgetown and open an office for the redemption of them.

Q. Who was that? *A.* Louis E. Clarke, I think.

Q. He was the man concerned in the New York Cemetery Co.—the Company on this Island? *A.* Yes, Sir.

Q. Did you do any thing towards exposing the dishonesty of that?

A. I have not done any thing about it.

Q. Have you ever done any thing to expose the transactions of Huntington with which you were familiar? *A.* I have not, Sir.

Q. Have you ever spoken to him on the subject of its being wrong to do any of these things? *A.* I think I have

Q. What have you said?

A. I do not know that I have had any particular conversation. I told him that he would get himself into trouble, if he did not look out, or something like that.

Q. Have you told him so more than once?

A. I think I have a great many times, in the course of conversation.

Q. What answer did he make you, when you told him so?

A. I do not know that he made me any.

Q. You mention that you did not remonstrate with him about the forgeries, because you thought he knew the consequences as well as you did. Is that the reason why you did not talk with him more in reference to these other things?

A. I do not know that I did not. I supposed that he knew the consequences.

Q. As well as you did? *A.* Yes, Sir.

Q. You knew the consequences of forgery, did you not?

A. Yes, Sir.

Q. And getting up the fictitious bank—did you not know that was wrong and criminal. *A.* Yes, Sir.

Q. And you supposed that he knew it as well as you did?

A. Yes, Sir, I have spoken about it to him.

Q. Have you ever said more than that he would get himself into trouble if he did not look out?

A. I do not know that I have.

Q. And you have never made any complaint against him?

A. No, Sir.

Q. Publicly or privately?

A. I have spoken about the thing to others privately.

Q. Now, immediately after this Washington Bank had exploded, he got up the Citizens' Bank—is that so?

A. Immediately before—I believe that was some time before. I was out of town at that time.

Q. Well, he got up the Citizen's Bank before the Farmers and Mechanic's? *A.* I believe he did.

Q. What year was that?

A. The same year I think it was.

Q. How was that got up?

A. I do not know the circumstances,—I was out of town.

Q. Do you know nothing about it?

A. Nothing, except what I learned after the thing had exploded.

Q. What did he tell you about it after the thing had exploded?

A. I do not know that he ever did tell me how he did get it up. He told me that he had sold the bank out.

Q. To whom?

A. I forget the party's name. I believe it was a Mr. Seely. I do not know the other name.

Q. Where is he?

A. I do not know. I do not know that I ever saw him but once.

Q. What did Huntington tell you about getting up that bank?

A. Nothing, Sir, in particular, that I know of.

Q. Where were you when it was got up?

A. In Covillskill, Schoharie Co. I was sick on my back.

Q. That scheme had its origin and failure while you were sick?

A. It had, Sir.

Q. Are *these* (handing bills) some of the bills? *A.* They are, Sir.

Q. When did you first see the bills of this fictitious bank?

A. The first time I think was after I got back from the country. I think it had exploded a good while before I got back.

Q. Were you at Huntington's marriage?

A. I believe not. I believe I had an invitation, but I did not go.

Q. Do you know whose signatures are these to these bills? (Citizens' Bank.) *A.* One is F. Barry, and the other is S. D. C. Barry.

Q. Who are they? *A.* They are brothers-in-law of Mr. Huntington.

Q, Have you seen them here during this trial? *A.* No, Sir.

Q. Have you seen them in town during the trial? *A.* No, Sir.

Q. Are these their signatures, or are they mere imitations?

A. They look like Mr. Huntington's writing. I do not know their signatures.

Q. From looking at them, do you believe them to be Huntington's?

A. I think it Huntington's.

Q. Did he tell you who got the plate engraved for these notes?

A. I do not know that he did.

Q. Were these men—the Barrys—here at the time?

A. I do not know whether they were here or at the Isthmus at that time.

Q. Were they down with you on the Isthmus? *A.* Part of the time.

Q. Was that bank then in operation while you were down on the Isthmus? *A.* No, Sir.

Q. Did you leave them there when you came from the Isthmus?

A. I did, taking care of the concern.

Q. You left them in charge when you came away? *A.* Yes, Sir.

Q. You did not close up that steam-laundry concern?

A. No, Sir; I would not wait.

Q. How long did they remain after you came away?

A. I think about two weeks.

Q. When they came back here, where was their place of business?

A. I do not know that they had any. I believe Samuel Barry went home to his father, to New London, Ct.

Q. Were these quite young men?

A. I think one of them was twenty-two, and the other twenty-five or twenty-six.

Q. Do you know whether they knew any thing about the issue of these bills of the Citizens' Bank? *A.* I do not.

Q. Do you know what number of these bills got into circulation?

A. I do not.

Q. Did you have any of this money to circulate?

A. I do not think I did. I might have had a few dollars.

Q. Did you know that there was no bank; that it was a bogus affair?

A. I did not know any thing about it until after I got back, and it had been closed up.

Q. At what time was it, in reference to these two fictitious banks that the *Androscoggin* matter was; while they were going on, or after they had both exploded? *A.* After they had both exploded.

Q. How long after? *A.* I think it was in the winter of 1853.

Q. How came you to know any thing about that?

A. I forget how I first came to know it. I know that he was out in the Eastern States, trying to do something, but what it was I did not know for some time.

Q. What were you doing while he was gone?

A. I believe I was not in any particular business.

Q. Where was your office? *A.* I had no office then.

Q. Where was your place of resort?

A. I used to be in Mr. Huntington's when he was there.

Q. And other offices.

A. I used to go into different persons' offices among my acquaintances.

Q. Did Griffin have any office there? *A.* No.

Q. Where was his place of business?

A. I do not know.

Q. Who was in charge of Huntington's office while he was gone?

A. I do not know that Mr. Huntington had an office about that time—from the time that his office was broken up at No. 29, upon his being arrested on account of this Farmers' and Mechanics' Bank.

Q. You did not, while he was gone to Maine, resort to his office down town?

A. No; if I wanted to see him I did not go to where he was not. I believe he had no office there for some time.

Q. How did you first ascertain that this scheme for getting up a company in Maine was going on?

A. I cannot say how I first ascertained it.

Q. Tell us the first you knew about it, and when.

A. I think the first I knew of it was after he got back. I knew he was off on something or other. When he got back he had a copy of the charter.

Q. Do you know that he first tried to get a Bank charter?

A. I do not, Sir.

Q. Had you any thing to do with that scheme?

A. Not at that point, Sir.

Q. When did you come with it?

A. After he had got it, and I found out about it, and took some advice on it, and been out there and seen the location of things at Danbury, I told him that if I might have the full and exclusive control and management of it, without any proviso whatever, that I would furnish the capital to carry it on.

Q. You told him you would go into it if you could have the whole control?

A. The whole control and management, without any obstruction whatever.

Q. Was that agreed to?

A. It was partially agreed to—so much so that I thought it would be.

Q. Did he assent to it? *A.* After a while he did. He did not at first.

Q. What were the terms to be? What interest were you to have, and what interest was he?

A. I was to have what I could legitimately make on it. I intended to put the thing upon a foundation that it would go on right and straight, and I knew that after I had that full control, I could in the course of time get out a good circulation of money; and that I could, by discounting paper, make as much as I would want, fair and right, and honorable and straight.

Q. That is what you intended?

A. That is what I intended—to make it a bank, and to have a manufactory too.

Q. Under the clause of which you have spoken? *A.* Yes.

Q. Was Huntington to have any interest in it?

A. No interest at all, that I am aware of.

Q. He was to give it all up to you?

A. He was to give the whole control to me.

Q. How much capital was it required to have by the charter?

A. The charter allowed $500,000—that was the extent of capital—not to exceed that.

Q. You said you would put in the capital?

A. Not half a million, but I would furnish the capital necessary.

Q. Had you any capital at that time?

A. I had some, and I had means of raising it.

Q. What amount had you yourself to put into the concern at that time?

A. I had some. I cannot state what. I could not say the amount of means I had of my own just then.

Q. Had you $500? *A.* Yes, Sir, several thousands of dollars.

Q. What did it consist of? *A.* Money.

Q. Where was the money?

A. Sometimes it was in my pocket, and sometimes in the bank. I had facilities for raising money.

Q. How much had you in your pocket? *A.* I cannot specify.

Q. In what bank did you keep your money?

A. I do not recollect what bank. I kept several bank accounts.

Q. You cannot name any bank in which you kept this money?

A. Not at that time.

Q. How long was this after he had sent you the $60 of bogus circulation in the country?

A. One and a half years I think, or something like that.

Q. Had you been earning money in the mean time? *A.* Yes, Sir.

Q. How?

A. In different ways. Receiving some from Buffalo, and earning some.

Q. How earning it?

A. I often used to buy notes, get them discounted, making trades, &c., as I said before.

Q. And you had in a year and a half made that money yourself?

A. I did not say so.

Q. When did you make it?

A. I cannot say when I did make it, only I had facilities for getting it.

Q. I understood you to say that you had money you could put into this concern, which money was in your pocket or in the bank?

A. I could get it. The principal part came out of my interest in the Buffalo Cemetery Co.

Q. The interest you had amounted to several thousand dollars, which you could put into the concern at Maine. How much was it?

A. I could not say. I should think somewhere in the neighborhood of four or five thousand dollars.

Q. Do you mean to say that you had it in money, in your pocket, or in the bank? *A.* I had, Sir.

Q. And cannot tell the bank where you kept your account at that time? *A.* I cannot, Sir.

Q. Did you carry that amount in your pocket?

A. Sometimes I carried a large amount in my pocket.

Q. Did you intend to start that Maine affair on your own account, with $4,000?

A. No, Sir, I intended to raise more money.

Q. How did you intend to raise it?

A. In different ways. I cannot say now.

Q. Had you any specific plan or scheme at that time, by which you were to raise money to put into that Maine affair?

A. I suppose I had.

Q. Can you mention one of these schemes now?

A. I intended to put up a small factory to manufacture some light article.

Q. What was it?

A. We thought of having it straw paper—it would cost the least.

Q. What else besides straw paper?

A. The charter did not call for more than one factory.

Q. Your main feature was to be banking? *A.* Yes.

Q. Did you have the certificates of stock engraved? *A.* No, Sir.

Q. State what you did to get it in operation.

A. I left the order for some bills with the New England Bill Co., in Boston.

Q. How large an issue?

A. The first number of bills ordered was for $50, 000.

Q. As to the second, did you leave another order? *A.* No, Sir.

Q. Did you get the bills? *A.* No, Sir.

Q. Why not?

A. Some officer of the Maine Bank happened to be at the engraver's office, and in looking over the Engraver's book for a specimen bill, he saw the title "Little Androscoggin Co." He told the engraver that it was a fraud; the engraver said he was sure it was not. When I went there at the time appointed, to see about them, the engraver told me this thing, and it seemed that the Co's. formed in Boston for the detection of counterfeits, &c., had told the engraver that if he delivered those bills to any one, they would break his business all up. He told me that he would not like to do them. I said he was right, but that I was according to law, and I showed him my charter. Several Boston Bank officers waited on this engraver, and said so much, and published so much, that I said I would not have any thing further to do with it.

Q. Was it after Huntington had agreed to give the whole management of the thing into your hands that you left the order for those bills?

A. Yes, Sir.

Q. Did you do any thing in regard to the manufactory?

A. I negotiated partially for the site.

Q. Did you pay any thing on account of it? *A.* No, Sir.

Q. Did it cost you any thing, any way else?

A. Yes, I spent some in traveling expenses.

Q. Was that all you expended in the affair? *A.* Yes.

Q. What did the charter cost Huntington?

A. He told me that it cost him, I think, $800 to get it through, but I had nothing to do with that.

Q. When was it he told you he could make $1,000,000 out of it?

A. He went up there afterwards to look at the land, after I said I would have nothing to do with it, and he said he could lay out a plot of land in lots for operatives, and make a large amount of money out of it.

Q. He was going to make a great mechanical village? *A.* Yes, Sir.

Q. Do you know who prepared that charter?

A. I do not. I told Huntington that if he was going to do any thing of that kind he ought to get more than one person to look at it.

Q. Had you made any arrangement for getting capital to go on with the business before you went to Boston for the bills?

A. I had made arrangements with different parties, that after I had got far enough to issue bills, they would take $500 or $1000 of the bills, to be redeemed at par in Boston, and to give me the money for those bills at par.

Q. Who where those persons?

A. I believe, Augustus L. Brown, James C. Griffin, Foster & Van Ostrand, besides thirty or forty others—I do not know who.

Q. Did you tell them the character of the bank?

A. I told them every thing that was done, that after I had every thing to do with it, it would be done all right, and according to law, and they had confidence in me to believe it.

Q. Whom had you selected as your redeeming agent?

A. The Globe Bank of Boston.

Q. Had that Bank consented to act as redeeming agent?

A. I believe it had.

Q. Who applied for that consent? *A.* Mr. Huntington, I believe.

Q. Did he do that before or after you ordered the bills?

A. Before, I believe.

Q. Did he apply to the Globe Bank before or after you had agreed to go into the concern?

A. I believe it was before, I was with him when that was done.

Q. He made that application while he was interested. What was the arrangement?

A. He was, after I took the control, to give me all the advantage of his aid I wanted.

Q. What sort of advantage?

A. He had a very great knack of making acquaintances, where I had not.

Q. You mean that he inspired confidence?

A. He could make acquaintances, and go up to people more easily than I could. I should not like to go into any bank without an introduction.

Q. You say that he was to aid you—in what respect?

A. In any one that I wanted him.

Q. How did you want him? *A.* I did not get so far as that.

Q. What compensation was he to have for aiding you?

A. There was nothing said about it.

Q. Was there any specification between you as to what he was to do?

A. No, Sir.

Q. How did you know that Huntington owed $100,000 when he went to California?

A. Well, I have seen the list, and I know most of the parties that he owed any considerable amounts to.

Q. Could you state who they were?

A. He owed John B. Borst, the Messrs. Thwing, Augustus L. Brown, James C. Griffin, Foster & Vanostrand, Dwight & Bishop, Geo. W. Corwine.

Q. Any one else? *A.* Oh, yes, a long string.

Q. Do you know what he owed them for?

A. Some were furniture bills, some for money borrowed, some for all kinds of goods.

Q. Do you know whether any of them were on forged liabilities, or about forged paper? *A.* Yes, Sir.

Q. What amount?

A. I cannot say that. The forged paper that I knew of, was $2,000 or so. That is about all I know of. I have no way of telling the amount.

Q. Has Huntington told you that any of that amount was forged paper, besides the $2,000? *A.* Not that I know of.

Q. When did you learn that he was indebted to this amount?

A. I think it was before or soon after he went to California.

Q. Where did he live before he went to California?

A. I do not know. It is my impression that he lived in Lafayette Place.

Q. Were you at his house in Lafayette Place? *A.* Yes, Sir.

Q. Did he live in good style?

A. Yes, Sir. I do not know of anything remarkable in it.

Q. What did he go to California for? *A.* I suppose to make money.

Q. Do you know what he did while there. *A.* He was a broker there.

Q. Did you have any transactions with him while in California?

A. No, Sir, not that I know of.

Q. How long a time did he spend there?

A. About four months.

Q. Did you have any transactions with him when he came back?

A. I forget what he went into when he came back.

Q. He came back in 1854? *A.* Yes, I believe he did.

Q. What did you first know him to be engaged in?

A. I think the first I recollect after he came back, he went to No. 67 Wall-st. and took a desk there.

Q. What was he doing there? *A.* He was a broker.

Q. Did you have any transactions with him after that?

A. Yes, I lent him some money; I cannot say how much; I lent him some which he paid back; I lent him more which he paid back.

Q. Where did his family remain while he was in California?

A. I think with his wife's father.

Q. Where were the young Barrys? *A.* I do not know.

Q. How soon after he came back did you first learn that he was committing forgeries again? *A.* Not until he was arrested.

Q. Do you know that young H. H. Barry, kept an office in Wall-st also?

A. Yes, he told me so this last spring. I never was in his office.

Q. Have you been in Huntington's office much within the last two years? *A.* Yes, Sir, considerably, until the last few months.

Q. For what purpose? *A.* I went there to make money ostensibly If any thing came along that I thought I could handle and make any thing by.

Q. Had you capital to make money on, in buying notes, within the last two years?

A. Yes, in 1854 I had an office of my own, where I was loaning money.

Q. Did you go to Huntington's office for the purpose of having business transactions with him, in the way of borrowing or loaning money?

A. I had a good many transactions with him in 1854. I may have had some in 1855.

Q. Did you have any in 1856?

A. I guess he loaned me money in 1856.

Q. Were you ever present when any parties gave him up forged paper?

A. No, Sir.

Q. Do you know what inducements were used to parties to give him up forged checks?

A. I do not, Sir; I understood that they did it willingly.

Q. After being paid?

A. I did not understand that they had been paid.

Q. Did you make any efforts to have them given up yourself?

A. No, Sir.

Q. Did you give up your own forged paper? *A.* I never had it.

Q. When was it you first learned that he forged the name of your firm? *A.* I think it was last March.

Q. Was that the first time you had ever known he had forged at all?

A. No, I knew it in 1852.

Q. Did he admit to you, that he forged your name?

A. Yes, he admitted that.

Q. You said it did not make much impression on you? Why not?

A. Because he never seemed to act towards me as though he intended to defraud me, or any one else.

Q. Do you mean that he was so kind and plausible about it—that he got your confidence so much?

A. It did not seem to me, that he intended to defraud. I never had that feeling while I have been with him.

Q. Have you not a natural detestation of forgery?

A. I know forgery is a crime. I would not want to commit it myself!

Q. But in this particular instance it did not make much impression on you?

A. No, Sir.

Q. Did he ever admit to you any forgery, except that of your own name? *A.* Yes, Sir—the ones I have mentioned.

Q. You say that his conduct in making those forgeries never made any impression on you, that he intended to wrong any one?

A. From my knowing the man, and being intimate with him, his actions did not seem that he intended to wrong any one.

Q. Was that the reason that you did not inform upon him, or check him?—*A.* I did not suppose it was any of my business to do that.

Q. When was it that you and he had this falling out?

A. I think it was in March or April.

Q. That grew out of a matter of $600? *A.* Yes, Sir.

Q. You said you gave him drafts, and obtained some information which led you to stop payment. Give the whole transaction.

A. There was a judgment against me and another party. Huntington said to me several times that it was hurting him—that it was hurting him

with Mr. Belden. I told him I would like to settle it if I could, and he made a proposition to me to give him two drafts for it, and he could settle it with Belden, at a certain length of time. I told him, if he could do so I would give him the drafts. I gave him the drafts, and after I had given them to him, some one said that he owned that claim himself, and not Mr. Belden. I thought if he did, he had no right to make me pay it, when I had signed his release, and had lost formerly by him; and so I stopped the drafts.

Q. You would not have given him the drafts, unless you thought the claim belonged to Mr. Belden? *A.* I would not have done as I did then.

Q. From that time you have been on ill terms? *A.* Yes.

Q. When were you spoken to about being a witness in this matter for him?

A. I believe the first time I was talked to about being a witness was on last Friday afternoon.

Q. Who talked to you about it? *A.* Mr. Bryan.

Q. Have you been present at any conversation or consultation about the defence that would be adopted in this case?

A. I knew what the defence would be. It was told to me by Mr. Bryan—that is all the consultation. That was about three weeks since.

Q. Have you seen Huntington since he has been in prison?

A. Yes, several times. I have not consulted with him. I have spoken of the different matters about it.

Q. When did he and you become reconciled, after your quarrel in March?

A. The first time I saw him to speak to him was two weeks ago, I think, last Saturday.

Q. Did he send for you, or did you go voluntarily?

A. I went there voluntarily, with Mr. Bryan. I told Mr. Bryan that I should like to see Charley.

Q. Have you not been engaged in aiding his defence, by subpœnaing witnesses or otherwise? *A.* I have subpœnaed one, Sir.

Q. Have you not done more? *A.* No, Sir.

Q. Have you not had conversations with his counsel?

A. I have talked considerably with Mr. Bryan.

Q. About his defence?

A. More particularly independent of the insanity.

Q. Your conversation was in reference to the defences, other than insanity? *A.* Yes, Sir.

Q. Do you mean to say that you had a serious quarrel with Huntington, about this false pretence, in March, and without any thing being done in the mean time to make it all right, you went to see him in prison?

A. Yes.

Q. Did you go there out of motives of friendship for him?

A. I expressed friendship for him, the day I first heard of his being arrested, and said I was sorry for Charley, and would do almost any thing to help him.

Q. Had you any difficulty with him except this $600 matter?

A. There has been considerable law between him and me. He made a good deal of trouble for me this last summer.

Re-direct by Mr. Brady.

Q. The Baltimore Cemetery affair, what date was it?

A. That was in the spring of 1849.

Q. And the Buffalo Cemetery?

A. Was in the fall or latter part of the summer of 1849.

Q. The New York Bay Cemetery?

A. Think that was in 1850.

Q. The Farmers' and Mechanics' Bank?

A. That was in the fall of 1852.

Q. The Citizens' Bank? *A.* In the fall or summer of 1852.

Q. The Steam Laundry?

A. That was commenced in the summer of 1851.

Q. The Little Androscoggin affair.

A. That was in the spring and summer of 1853, I believe.

Q. Now leaving the Buffalo Cemetery out of the question, how much did Huntington realize by all these?

A. I do not know that he realized or received any thing.

Q. The $3,500 that you gave him in the Buffalo affair—did you give it to him in money, or a check?

A. He got indebted to me considerably. $1,800 of it, I think, was a debt he owed. The $3,500 was agreed upon, to get him out of thinking he had any thing to say in it.

Q. When you charged Huntington in regard to the forgery of your firm, he asked you if there was not a mistake of your book?

A. He said: "Well, you can make a mistake;" something like that.

Q. What did you say to him when he said that?

A. I do not recollect that we had any more words about it.

Q. About this $600 transaction, you said he stated that Belden owed the claim, what was it for originally?

A. It was on a note drawn by Foster & Vanostrand, and payable to my order, and indorsed by me, which Mr. Belden held, and sued and got a judgment on against me. I believe that was in the spring or summer of 1855. I do not recollect whether it was in the Superior or Supreme Court.

Q. Had Huntington any thing to do with that suit?

A. Not that I know of.

Q. What was the amount of the judgment? *A.* $600 and odd.

Q. They were pressing you on that judgment, were they not?

A. They were, that is, Mr. Foster was; they issued an execution, I believe. I believe they had made a levy on some personal property.

Q. Then Huntington came to you to aid you in settling it, apparently?

A. He told me that it was pressing him, because he could not have any thing, while Mr. Belden held that unsettled.

Q. What did he propose should be done?

A. That I should give him two drafts on Wm. H. Clarke, of Buffalo, at 8 and 10 months, which I did.

Q. Had Mr. Clarke any money of yours?

A. No, but he used to accept my drafts sometimes.

Q. What was the next you saw of Huntington?

A. I believe Mr. Huntington sent them back to me. The next I saw of him, I think, was in February or March; it may have been in January, 1856.

Q. Where are the drafts now? *A.* I do not know.

Q. Were there any indorsements on them? *A.* No, Sir.

Q. What became of the judgment?

A. Mr. Huntington gave me a satisfaction for it, twenty minutes after I gave him the drafts, signed by Belden himself, or by his attorney.

Q. You filed it? *A.* I gave it to Mr. Foster.

Q. There has been nothing paid on these drafts? *A.* No, Sir.

Q. You wiped out this judgment without paying anything? *A.* Yes.

Q. Who told you Huntington owned this claim? *A.* Mr. Foster.

Q. Did you ask Mr. Huntington if he owned it?

A. Yes. He said he did not.

Q. Were you in the habit of reposing much confidence in the statements of Huntington? Was he truthful?

A. I used to believe him sometimes, and sometimes I did not. I could generally tell when he told me truth or not. He has often told stories to me and other people, which I or they might know to be untrue.

Q. And stories that he was aware you must have known were not true?

A. Yes.

Q. This litigation that you speak of—was that between you and Huntington?

A. No; between us and third parties—Charles E. Scofield was one, and Frank Hay another—on a lot of notes.

Q. Whose notes?

A. J. & S. Randel's notes; some were in the Cemetery transaction, some on borrowed money; some on operations that have never been closed up between the makers and indorsers.

By the Court: In reference to these first forged notes, for about $2,000 and upwards, how many were there? *A.* There were seven or eight.

Q. How many persons held them?

A. Two, I understood. I did know but one.

Q. Were the persons whose names were forged ever called upon for the money? *A.* I do not know.

Q. Did they ever know their names were forged. *A.* Yes, they said so.

Q. Was any charge ever brought by any of these parties against Mr. Huntington? *A.* Not that I know of.

Q. Do you know whether the notes were ever presented for payment?

A. I do not.

Q. In relation to Griffin—his name was forged. Was that ever presented to him for payment?

A. His was a check. The bank paid it from Griffin's funds. He took it out of the bank.

Q. When he took it out, did he give it up to Huntington?

A. I do not know. I understood Mr. Huntington got it afterwards.

Q. And Mr. Griffin afterwards did business with him as before?

A. Yes; to some extent. I do not know how much.

Q. What year was that forgery in?

A. In 1852, on the Butchers' and Drovers' Bank.

Q. Did the bank ever find out the check was forged?

A. I do not know.

Ebenezer W. Thwing, sworn; examined by Mr. Brady.

Q. What is your occupation? *A.* A Broker, at No. 23 Wall street.

Q. How long have you known Huntington? *A.* About six years.

Q. When did you have the first business transaction with him?

A. I think about 1849. We took a front office, and found Mr. Huntington there in the rear. We were introduced to him by the landlord as a man not objectionable as a tenant.

Q. What was the character of your business?

A. Exchange and Money Brokers.

Q. Did you receive from him any forged paper at any time?

A. I believe in the early part of 1852 there was some paper that we had taken from him, of which the parties denied the signature.

Q. What was the amount of it?

A. I think they were two checks for $500 cash.

Q. Whose was the first check?

A. Westervelt & Bogart's. The second was of Augustus L. Brown. I cannot remember on what bank.

Q. What has become of those checks?

A. Those checks have been returned to Mr. Huntington—I think within the last six months. I returned or inclosed and sent them to him.

Q. They never were paid at the bank?

A. They were never presented at the bank, as near as I can remember.

Q. Who said they were forgeries?

A. Westervelt & Bogart said there was something wrong about them, that they never signed them; and Mr. Brown said the same.

Q. Did you tell that to Huntington?

A. I told Huntington they said they were not their signatures. He said there was some mistake, and insisted that it was not so.

Q. Did you advance money upon these checks?

A. I gave him the money for these checks.

Q. Did he succeed in making you believe they were genuine?

A. He did not. I did not present them. I did not know any further than that it was a disputed matter between them.

Q. Was any complaint made about this?

— *A.* There was no complaint made.

Q. Did you afterwards release Mr. Huntington for that debt?

A. I signed a general release of his obligations to me, I think some two years since.

Q. Have you lent him money since? *A.* No.

Q. Borrowed money from him since? *A.* I have.

Q. Why was not some notice taken of this matter—some complaint made?

A. It was suggested by one party that some complaint ought to be made, and by the other that I would only make myself trouble, and that I had better let Mr. Huntington take care of the check. I thought it was as much their business, comparatively, as it was my own.

Q. Huntington continued on in business the same as if nothing had happened?

A. He did not at that time. He seemed to be broken up, and the landlord took possession of what effects he had in the office. I think that must have been July or August 1852 or 1853. I do not remember dates precisely.

Cross-examined by Mr. Noyes.

Q. Were those all the transactions you had with him, where there was forged paper? *A.* All that I am aware of.

Q. This was in 1852?

A. I believe so,—I think in July or August. About the time his business was broken up, and he ceased to occupy any portion of the office with us.

Q. What broke him up? *A.* I think something about the Citizens' Bank.

Q. Do you remember that he was indicted?

A. I do. I made an affidavit of complaint against him, for having given me some of the bills on the Citizens' Bank, Georgetown, District of Columbia. I sent them there for collection, and they were returned, stating that there was no such Bank. He gave me I think $350. I got $100 redeemed in Wall Street.

Q. Did he ever close up that transaction with you?

A. The bills were taken by the police, with my affidavit, and still remained in their custody.

Q. Was that after or before he gave you the forged checks?

A. I think about that time.

Q. Why did you complain of him in relation to the bank notes and not the forgeries?

A. I was called upon to make a complaint about the bank notes. I was subpœnaed.

Q. Did you mention the forgeries to any one?

A. I mentioned them to the parties whose names were used. I do not know that I did to any other parties, unless it was to Mr. Huntington himself.

Q. This was an ordinary transaction in which he gave you those checks?

A. Yes. We were in the habit of discounting checks on short dates, when nearly due, for uncurrent money, to use in new operations.

Q. When you presented the checks to the parties, did they ask from whom you had obtained them? *A.* Yes, Sir. I told them.

Q. Did Huntington propose to make it all right? *A.* Yes.

Q. Did you agree to hold on to them?

A. I passively let them remain. I made up my mind it was better to pocket wrong than to go to more loss and trouble.

Q. Did you make up your mind that it was better to submit to the forgery?

A. I have made up my mind that it is better to suffer any wrong they commit upon me in Wall Street, than to make any attempt to right myself. (Laughter.)

Q. That is the result of your experience in Wall Street?

A. It is the result of my experience, to my sorrow.

Q. Did you rely on Mr. Huntington's promise to make it all right?

A. Not fully, for I supposed that he was bankrupt.

Q. When did he apply to you to release this debt, among others?

A. He applied to all his creditors to procure a general release.

Q. On what terms?

A. He made no terms that I am aware of. With me he promised that, if enabled to do business, he would pay me.

Q. You released him without any present consideration.

A. I think he sent me $500. I believe that was two years ago.

Q. The release was understood to be for $500, and the promise that if he got into business he would pay you?

A. That was understood.

Q. When did he pay you? *A.* He only paid me a portion.

Q. How large a portion? *A.* I think $800.

Q. And the whole amount due you, how much?

A. I think over $4,000.

Q. When was it you returned him those checks?

A. Some time within the last six months.

Q. Did he not pay you some money then, or since? *A.* No, Sir.

Q. Did you not retain those checks as a means of obtaining the amount from Huntington? *A.* No, Sir.

Q. Did you dun him after the release?

A. I frequently asked him to settle up his affairs with me. I held protested drafts of his to the amount of $2,000.

Q. Did he request the checks, or did you go and offer them to him?

A. At the time I think he suggested that I had better give them up, and some other evidences of indebtedness?

By Mr. Brady: Are these (presenting papers) the checks you speak of? *A.* They are.

[They are as follows, partly written and partly printed, the written portions in italics:

No. New York, *Aug.* 21, 1852.

BUTCHERS' AND DROVERS' BANK.

Pay to _____ or Bearer,

Five hundred dollars.

$500. *WESTERVELT & BOGART.*

New York, *Sept* 11, 1852.

NORTH RIVER BANK.

Pay _____ or Bearer,

Five hundred dollars.

$500. *AUG. L. BROWN.*

Q. Are you not in error in supposing that you made an affidavit at the Police-office, in reference to the Farmers' and Mechanics' Bank.

A. It was our clerk, Mr. Baker.

Q. Where is he? *A.* He is still our book-keeper.

A. *This* (handing paper) is his writing? *A.* I think it is.

Q. *There* (handing another paper) is a letter you received from the cashier of the Farmers' and Merchants' Bank? *A.* Yes, Sir.

Q. Were you acquainted with Huntington's handwriting?

A. I was, but his writing was not always alike. At one bank his account would be signed in an entirely different writing from another.

Q. Look at the filling up of those checks, and say whose handwriting they are in?

A. I cannot recognize them as being filled up by him. He had an *ornate* handwriting ordinarily.

By the Court: What was the aggregate of your dealings with Huntington? *A.* Probably $100,000.

Q. How was it?

A. Buying notes, checks, and drafts, on short time. Strictly within our business.

Q. Were those drafts and checks usually of a small amount, or large?

A. I think none larger than $1000.

Q. What was his manner of doing business? Had he any system about it? What was his sagacity—exhibited in the transaction of business?

A. He was a very gentlemanly man. I cannot say that he was any less shrewd than other people. His transactions with us were frequent, in discounting short time checks. This business was, I cannot say daily, but frequent.

Q. Were your transactions with him of a simple character, or involved?

A. Simple transactions, for a day or two, except one draft I purchased from him on Cameron, that necessarily occupied much longer time.

Mr. Brady put in evidence, and read, without objection, the papers filed in the District Attorney's office, in regard to the complaint of John A. Patmor *vs.* Charles B. Huntington, in November, 1852, charging him with obtaining money under false pretenses and false tokens. [For these see *post.*]

Paul D. Burbank sworn: Examined by Mr. Bryan:

Q. What is your business? *A.* A livery stable keeper.

Q. How long have you known Huntington? *A.* I think about three years.

Q. Where did you first become acquainted with him?

A. He was boarding at No 1 Irving Place. He sent after carriages to my place.

Q. Just tell what you know of him as briefly as possible.

A. That was the first place I knew him. He rode with me, and his bills were paid along. When he moved from there he owed me a bill. He then moved to the Metropolitan Hotel, I think; next to 19th Street. He still rode with me.

Q. Had he the whole or part of the house? *A.* I do not know.

Q. Do you know Mr. Gillespie? *A.* I do not.

Q. How long did he stay in 19th Street? *A.* I think inside of a year.

Q. In what style did he live there?

A. I do not think I was ever in the house to know.

Q. Where did you know him next? *A.* We moved him to 39th Street.

Q. How long did he remain there? *A.* Something like six months.

Q. Where next?

A. He broke up house-keeping there, and his wife went into the country. Just before she came home, he hired a house of me. No. 100 East 22d Street.

Q. On how long a lease?

A. Three years, at $1000. It was a four-story house, English basement—not a full lot,—about 16 feet wide.

Q. For how long a period did he request the lease to be made out in the first place?

A. Five years. He said he did not want to hire a house on a short lease. He wanted to establish himself.

Q. Did you sell him furniture?

A. Yes, Sir. What I sold him he paid me $800 for.

Q. Did he examine it before he bought it? *A.* No, Sir, he did not.

Q. Had he been in the House?

A. He went into the house with me some time before—the time that his wife went into the country.

Q. Did he give any close examination of it? *A.* He said he did not.

Q. What did he do with the furniture after he bought it?

A. I think he gave it away. I understood some of it went to Connecticut.

Q. How quick did he want you to move out of the house, when he hired it?

A. Three days, I think. It was in the fore part of the week, and he said his wife was coming home on Saturday, and he wanted to get me out and get the house furnished.

Q. Before you got out of the house, did he commence moving the furniture in? *A.* Yes.

Q. To what extent?

A. He had so much in that it was difficult for us to move round.

Q. What was the character of that furniture?

A. Very nice. Some rosewood and brocatelle.

Q. In what style was the house furnished when you saw it afterwards?

A. It looked a good deal like an auction room, where a lot of furniture was moved in to be sold.

Q. How long did he remain there under his lease of three years?

A. He moved in the last of January, and I think he moved out the fore part of June.

Q. Where did he go then?

A. He moved into No. 86, in the same street. About the same kind of house.

Q. Do you know for what purpose he took and furnished that?

A. He told me he furnished for another person, a friend of his——

Mr. Bryan: You need not mention his name.*

Witness: And the reason he did not occupy it was that his (that person's) wife was sick, so he (Huntington) thought he would move into it himself.

Q. What did he do with the other establishment, No. 100?

A. He sold out at auction,

Q. When did you become aware that he intended to make this change.

A. I think he had nearly completed the fitting up of the other house. Mr. Peck, a neighbor, first called my attention to it, and I then went to inquire about it.

Q. Did you see Huntington frequently about that time?

A. Yes, nearly every day.

Q. He did not mention any thing of this change to you? *A.* No.

Q. He had an auction at No. 100. Did he sell all the things that remained there?

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* This person was the greatest sufferer by defendant's forgeries of 1852, and he was not brought forward as a witness because the defendant and his relatives and friends were reluctant to call him, for peculiar reasons, and from a sense of honor towards that individual. It is clear enough from all the evidence that his testimony might have aided very materially in illustrating the extent and character of the old forgeries; and the absence of his evidence is much to be regretted.

A. There was pretty much every thing sold. There were a few articles not sold. Word came from his office to stop the sale of the mirrrors, for they were sold to the person coming into the house.

Q. Were you present at the sale? *A.* Yes.

Q. Have you any idea what the furniture brought?

A. I cannot say.

Q. When you sold out your furniture to him, was there any negotiation, or was $800 the price you named yourself, and that he paid?

A. That was the price I named. I think making the bargain to lease the house and buy the furniture occupied about fifteen minutes.

Q. Was there any inventory? *A.* No.

Q. Did you see the house he moved into at No. 86? *A.* Yes, I did.

Q. Give a description of it in general terms?

A. I do not think I can.

Q. What was the style in which it was furnished?

A. It was very elegantly furnished. Every thing in the best possible style.

Q. In what quantities?

A. I suppose there was enough in that house, to furnish three houses of the same size.

Q. What amount of ornaments?

A. I cannot say—a great many.

Q. Any Iron Safe in that house?

A. I believe, two. One was a very large one. I saw it when they were taking it out of the house, after the Assignees' Sale.

Q. Do you know how long a lease he took that house on?

A. I do not.

Q. Nor what rent he paid? *A.* I do not.

Q. You say you hired carriages to him, and that he owed you a bill. When was that paid?

A. Last Fall, I think; the Fall of 1855.

Q. How much was it? *A.* A small bill, something like $30.

Q. He was so poor before, that he could not pay it?

A. He said he could not. I think it had been standing something like a year.

Q. Had you asked it from him during that period?

A. I had sent for it quite a number of times.

Q. When he paid it, did he commence patronizing you again?

A. He rode with me, more or less, all the time.

Q. And paid you? *A.* He did.

Q. On the day that he paid this bill, what amount did he ride?

A. I think he rode something over $12 that day. I had sent for this bill several times; and I had an idea he could pay it, if he had a mind, so I presented the bill myself. He made the remark that he owed $100,000, or 200,000, (I do not know which) more than he could pay. I asked him if he meant by that, that he would, or could not pay that bill? He said no, he did not mean so; that he was about making arrangements to settle up his affairs, and when he completed that, he would have money enough—that he had some friends that were going to set him up in business, or start him in business, or something like that. In a few days he sent me part of the money, and on the day he rode so much, he paid me the remainder of the bill.

Q. When did he first purchase horses for himself?

A. I should think that he bought a pair of horses along in June last.

Q. Why did he buy those, instead of hiring yours?

A. He thought he could not hire carriages good enough at Livery Stables, and that he had got to turn out an establishment of his own.

Q. Who bought those horses for him?

A. I think he bought the first pair himself. He came to me and said that he could not hire carriages good enough, that he wanted to turn out an establishment of his own. The next day he sent a carriage up to my place. He said he wanted to buy a pair of horses, and wanted to know how he could buy them—that he was not a judge himself. I told him, if he had not judgment himself, the best way was to find some person he could place confidence in, and pay him for buying them. He asked me if I would buy a pair. I agreed to do so, and about two hours afterwards I found that he had bought a pair himself. They were a small pair of sorrel horses.

Q. What did he give for them?

A. I understood that he paid $400 for them.

Q. Were they worth it?

A. I cannot say. One of them was taken lame right away. He drove them three or four days, and hired another to drive with the one not lame. He hired of the person he bought from.

Q. What became of the lame horse?

A. It stood in the stable I believe two months. His wife was then going into the country, and he came to me about hiring a pair of horses for her to take into the country. I said I thought the horse called lame would answer the purpose. He said he did not think it would. I told him to let me see the horse, and if it would answer I would tell him. The man drove the lame horse down, and when I examined it I thought it would answer every purpose. He took my advice, sent them to the country, and used them there. While his wife was up there, I believe he bought another pair of horses—a nice pair of black horses.

Q. What did he give for them?

A. I am not sure whether he bought these right out, or traded another pair.

Q. Where did he get the other pair?

A. I do not recollect.

Q. Did you buy a pair for him?

A. I examined them, and he bargained.

Q. When was that?

A. That was somewhere about July, I think; probably in the fore part of July.

Q. How much did he give for those?

A. $1000. I think he exchanged those for the black horses.

Q. Did he have any other horses that you knew of? *A.* Yes, Sir.

Q. What was the next pair that he had?

A. He had a pair of bay horses. I understood he gave $1500 for them.

Q. Did he buy those himself? *A.* Yes, I believe he did.

Q. Where did he keep them?

A. Corner of Fourth Avenue and Twenty-fifth Street.

Q. What other span of horses did he have that you know of?

A. He had another span—a sorrel and a gray, I believe.

Q. Where did he get those?

A. I think from a man of the name of Marshall.

Q. How much did he give for them?

A. I understood they cost something like $2000.

Q. What did he do with them?

A. I do not know what became of them.

Q. What other horses did he have?

A. Another pair of bay horses.

Q. Where did he get those?

A. Those came from New Hampshire. He said he wanted the nicest and fastest pair of horses in the state.

Q. How many horses had he at that time?

A. I think three pair. One pair was at my stable, and the others at the corner of 25th Street and 4th Avenue.

Q. How often did he use them?

A. Sometimes every day—sometimes once or twice a week.

Q. Did he alternate in the use of the horses, taking one pair one day and another pair the next, or did he use one span for a few days, and let the rest remain idle.

A. I did not know so much about his using the horses, until this pair came from New Hampshire. He had them all at 25th Street and 4th Avenue, before I brought those to New York.

Q. Did you go to fetch them at his request? *A.* Yes.

Q. What did they cost him?

A. They cost him $2,650. He used to generally ride out with them every day for a short time.

Q. Did he drive them pretty regularly?

A. I believe he did. He used to drive the bays once in a while. Those last bays he used to drive generally.

Q. How many carriages did he have during this time?

A. He had four or five I believe.

Q. Did he have the same carriages all the time?

Q. No, Sir: he bought and sold. I could not say how often. I saw him have different carriages.

Q. How many different carriages did he own to your knowledge?

A. Perhaps five or six.

Q. Did he ride in Broadway to your knowledge? *A.* Yes.

Q. And in Wall Street?

A. I not know that I ever saw him in Wall Street. I have in Broadway.

Cross examined by Mr. Noyes,

Q. What was the amount of Huntington's monthly bill for riding, before he bought horses?

A. Before last fall of 1855, his bills were small. After that, and up to June, they may have been $50, $75, or $80 a month. I cannot tell exactly without my book.

Q, Is that an unusual amount for persons to pay?

A. I have customers who ride more than that.

Q. Have you not customers who pay from $100 to $150 a month for riding

A. Sometimes. When people hire a carriage and horses by the month

they pay $150. They then have a carriage and horses exclusively to themselves.

Q About what time was it he rode $12 worth in one day?

A. Some time in February last.

Q. Do you know what he was doing that day?

A. I do not. It was the time he broke up in 39th Street, and his wife went to the country.

Q. Was there any thing greatly out of the ordinary course of your business in that?

A. It was rather unusual for a man to ride that amount in one day.

Q. Now in reference to those horses. Is it not usual for a man of wealth to have from two to three pair of horses?

A. I do not know any man in his right senses that would have so many horses as he kept.

Q. You think that entirely unusual?

A. Yes; and unnecessary too.

Q. The first pair he gave $400 for? *A*. Yes, Sir.

Q. You are not prepared to say that was an unusual price?

A. I do not know much about them.

Q. Did you buy more than one pair of horses for him?

A. Yes; both pair of bay horses.

Q. What did you give for the horses you bought in New Hampshire?

A. $2,650.

Q. Did Huntington furnish you the means?

A. Yes; and he paid me for my trouble in getting them—$2,650 in all.

Q. Did he hear of those horses through you? *A*. Yes.

Q. Did you advise him to buy them? *A*. I presume I did.

Q. How many horses had he when you gave him that advice?

A. I cannot say. I guess he had three pair.

Q. Did he ever have on hand more than two pair at a time that he intended to keep? *A*. I cannot say. I do not know that he had.

Q. After he got these $2,650 horses, did he not dispose of one of the other pair?

A. I think he did. I think he had then three pair left—the black pair, a pair of bays, and a gray and sorrel.

Q. How long did he keep the New Hampshire horses?

A. Until they were taken away from him by the assignee.

Q. They were sold at auction. What did they fetch?

A. $1,400. They were fine horses. I think they were worth $2,600, according to the value of horses here. I think they were as good as any in the city.

Q. When he was arrested for these offenses, how many horses had he?

A. I am not sure whether four or six.

Q. What did the black pair sell for?

A. $575, I think. They were very fair horses.

Q. What did they cost?

A. The pair I understood he exchanged, cost $800.

Q. Did you advise him to buy those? *A*. Yes.

Q. How many carriages had he on hand when arrested?

A. I think at that time he had sold off a lot. There were two or three went from my place one day.

Q. Were these extravagant, costly, or moderate carriages?

A. I do not know what a man would want with such carriages. One was an awkward kind, made for a man to ride, with a negro perched up behind in the air.

Q. Do you know what they cost or sold for? *A.* I do not.

Q. What kind were the others?

A. One was a *coupé*. That was the best he had.

Q. Did he keep those carriages at livery?

A. He kept them at livery. He was going to have a stable, but did not carry it into effect.

A. How many coachmen did he keep?

A. Three or four, grooms and coachmen. He kept them all the summer, I guess.

Q. About his dwelling houses. Did you know any thing about his style of living before he went to 22d Street? *A.* No, Sir.

Q. You had lived in the house No. 100, yourself and family? *A.* Yes.

Q. Did you remove any furniture besides what you sold him for $800?

A. I sold him carpets, some sofas, bedsteads and mirrors.

Q. Are not such things usually sold to the incoming tenant? There is nothing unusual in that? *A.* Nothing.

Q. And you made the bargain, you say, very quick? *A.* Yes,

Q. How many times were you in the house while he was there?

A. A good many times.

Q. What did you go for?

A. Different purposes, on business of my own. Sometimes to see if any letters had been left for me,

Q. Did you ever go to spend the evening, or transact any brokerage business? *A.* No.

Q. Did you meet any one else there? *A.* I do not know that I did.

Q. He left this house very suddenly? *A.* Yes, suddenly to me.

Q. Who told you he was going to leave?

A. I think Mr. Peck, living opposite.

Q. How soon did he leave after Peck told you?

A. Probably a few days.

Q. What did he do with your house, after leaving it?

A. He let it to another party, named Bridges—a lady and her daughter.

Q. Eloise Bridges, is that the name?

A. That is the name of the daughter.

Q. Did you ever see her play at the theater? *A.* I never did.

Q. Did you consent that they should be your tenants?

A. There was nothing in particular said about that.

Q. Did he tell you to whom he had let the house?

A. I do not know about that.

Q. Was there any clause in the lease against under-letting it?

A. The usual clause. I went to inquire about this party that was going into the house, and I was satisfied by what I learned.

Q. Did he leave furniture there, for them to use?

A. The furniture was sold at auction, and taken out.

Q. And other furniture brought in? *A.* The house is furnished now.

Q. Who furnished it? *A.* The people in the house.

Q. Do you know they did it?

A. No, Sir. I live in the house now, and have got furnitnre in there.

Q. Was Huntington's furniture all taken out?

A. Yes, Sir; all but the things I named.

Q. Do you mean to say that these persons furnished the house themselves, after Huntington left it?

A. I do not know how I would have had the means of telling what they did, except that I saw the bills in their names.

Q. How soon after they went into the house, did you go there?

A. Not a great while since.

Q. Had they been there more than four or five weeks, before you went in with your family.

A. No. I went into the house about the time of this *bustification.*

Q. After the arrest of Huntington?

A. Yes, after this great fire broke out.

Q. When did Huntington go from No. 100 to No. 86?

A. Along the first of June.

Q. Had he paid you any rent before he left?

A. Yes. He paid me when the rent was due, always, as long as he could.

Q. Has the rent been paid you since? *A.* No.

Q. Has Huntington, or any one for him, paid you rent for the Bridges?

A. No. I have not received rent since this thing happened.

Q. Up to what date was the rent paid by Huntington?

A. There was a quarter due on the 4th of November.

Q. The last quarter he paid was the August quarter? *A.* Yes.

Q. Do you know anything about Huntington having the house No. 78 East 22nd-street? *A.* I do not, Sir.

Q. Do you know anything about the house, No. 80?

A. Mr. Peck owns it, I believe.

Q. Who lived in that house? *A.* Miss Merserole.

Q. What had he to do with that house?

A. That is more than I know.

Q. Do you know anything about it? *A.* No.

Q. Were you in the habit of going to No. 80?

A. I have been there frequently to collect a bill for carriage riding. I never got it. That is what I went for and nothing else.

Q. Who lived there with Miss Merserole. *A.* I suppose her husband.

Q. Was Huntington's house, No. 86, furnished any better than No. 100?

A. Yes, Sir.

Q. In what respect? *A.* More furniture, and it was nicer, too.

Q. Do the occupants still continue to live in No. 80?

A. I believe not, Sir.

Q. When did they sell out? *A.* I do not know they did sell out.

Q. When was that broken up, do you know?

A. It was at the time of this *great fire.*

Q. Do you know what connection the breaking up of it had with this "great fire?" *A.* It exploded and went out at that time.

By Mr. Bryan.

Q. When you say "*Miss* Merserole," you mean "*Mrs.*" Merserole?

A. Yes.

Q. Do you know Mr. Merserole? *A.* Yes.

Q. You know that he lived there with his wife? *A.* Yes.

Q. Were there others there besides himself and his wife?

A. I understood he kept boarders.

Adjourned to Wednesday, Dec'r 24th, at 10 o'clock, A. M.

Wednesday, December 24, 1856.—*Dr. John Simonds* sworn. Examined by *Mr. Bryan:*

Q. What is your age? *A.* I am in my 56th year?

Q. What is your occupation? *A.* Physician.

Q. Did you know Huntington in his youth?

A. I knew him in 1841, Sir.

Q. Where was that? *A.* In Geneva.

Q. Did you reside there then? *A.* Yes.

Q. What was your business there?

A. At the time I went to Geneva it was to establish a depot for a railroad.

Q. What did you know of him there?

A. I first became acquainted with his father, who was a manufacturer of furniture. I first became acquainted with him about that time to price some furniture to furnish this place at Geneva with.

Q. What did you see noticeable or remarkable in the conduct of Mr. Huntington?

A. Nothing particularly extraordinary, only there was a strangeness of manner about him. He was erratic. He would call to see me frequently. I did not purchase the furniture of his father, but did so of a Mr. Beach. Huntington would call and see me, and ask me if I had made my arrangements about the furniture. There was nothing very particular or remarkable about him, only he had a curious manner with him.

Q. Did he ever bring you a letter purporting to come from any one?

A. He brought me a note one day, purporting to come from Mr. Skaats.

Q. For what purpose did he bring you that?

A. He brought me a letter, purporting to come from Mr. Skaats, requesting that I would send him a magnet, and I remarked to Charles, as I called him, that I did not know what he wanted with it, and that I did not care about sending it to him, but that I was going into the village, and would call upon him, and that if he then wanted it I would let him have it. He (Huntington) then took the note from me, and laughed, and said that it was only a joke. I told him that the joke was rather a dangerous one, and that he must not perpetrate such jokes upon me.

Q. Do you know any thing about his practising penmanship?

A. There was a pen and ink on the table in my place, and when he came there he used to scribble.

Q. Scribble what? *A.* The names of the different residents at Geneva.

Q. Did that call forth any remark from you?

A. I think I said to him on one occasion that I could not imagine why he scribbled those names, that I thought it was not a safe practice, particularly after he had brought this note to me. He laughed, and said, there is no harm in it.

Cross-examined by the District Attorney.

Q. You are now living in this city? *A.* Yes.

Q. You were a candidate for Coroner several years ago? *A.* Yes, Sir.

Q. How long were you in Geneva? *A.* From 1841 to 1845.

Q. Did you see much of Huntington during that time?

A. Not a great deal.

Q. About how old did he seem to be at that time, from his appearance?

A. He looked like a slim, growing boy, of something between ninteeen and twenty.

Q. Full of fun and mischief? *A.* Not exactly mischief.

Q. Now as to this communication purporting to be signed by Skaats,—did you know Skaats' handwriting?

A. I think I did. I am not quite sure, Sir.

Q. It was rather an imitation of it. He came near misleading you?

A. No.

Q. Would it not have done so if he had not said that it was a joke?

A. I think not, after I told him I could not see what Skaats wanted this magnet for.

Q. You supposed it did come from Mr. Skaats until he said it was a joke?

A. Yes.

Q. Who did you first tell this story to about Huntington?

A. Here in New York?

Q. Yes.

A. I mentioned it, I think, in the *Ivy Green* to officer Rue, who was present. I did not tell him the circumstances of the note, but talked generally. I said that I knew Huntington as a boy, and that he was a very strange boy.

Q. This was recently? *A.* Within the last ten or twelve days.

Q. While this trial was going on?

A. Yes, the remarks were called forth in all probability by seeing the ground taken by the defence.

Q. This ground taken by the defence reminded you of these things, and you spoke of them publicly? *A.* Yes.

Q. This writing was done in an off-hand, careless way.

A. A careless scribbling way.

Q. And you have seen persons fond of writing do the same thing.

A. Yes, frequently.

Mr. Brady: What became of the note?

A. He took it from me, and said it was a joke.

The Court: If he had not made that remark, would you have noticed that it was not the writing of Mr. Skaats?

A. I cannot say. It was all done in so short a period of time that I cannot recollect the matter fully.

The Court: If this man had not been upon trial, and his peculiarities had not been made the subject of examination and investigation, was there anything to indicate at that time that he was peculiar—erratic?

A. Was there anything remarkable in him, do you mean?

The Court: Yes. Did it so distinguish him from other boys as to call your attention to the peculiarity?

A. Yes, there was. It is something indescribable, but he had a peculiar wildness in his manner. He was not a bad boy, and did not, as far as I

know, associate with bad company. He would fly off at a tangent when you were speaking with him.

Mr. Noyes: When you were talking with him, and he to you, his attention would appear to be directed to something else, and he would leave you suddenly?

A. Yes, leave me in an instant, and would be flying down the railrrad.

Q. What was his business at that time?

A. He was with his father in the cabinet business.

James E. Hadden Sworn. Examined by Mr. Bryan.

Q. What is your business? *A.* I am a tailor.

Q. Where is your place of business?

A. In Broadway, near Chambers Street.

Q. Has Mr. Huntington been a customer of yours? *A.* Yes.

Q. For how long? *A.* For the last five or six years.

Q. How did his account run about a year ago?

Q. He has been a very good customer all the way along.

Q. During the past year what has been the character of his purchases?

A. He has bought during that length of time some $600 or $700 worth.

The Court: In one year. *A.* Yes.

Mr. Bryan: Give the Court and Jury some idea of his manner when he made these purchases.

A. He would come in and order a coat, two or three pairs of pants, and two or three waist-coats, at the same time.

Q. Did he remain long when he made his purchases?

A. Only a few moments. He would do it very quickly.

Q. Did he chaffer about the price? *A.* No.

Q. What was the description of goods that he selected?

A. He would generally buy the best that I had; the best quality and the highest priced ones.

Q. About how many pairs of pants do you think he bought of you during the last year?

A. Without looking at my book, I should think he bought some twenty-five or thirty pairs.

Q. About how many coats?

A. Some seven or eight coats, I suppose. It may be more. I cannot tell exactly without looking.

Q. About how many vests? We do not care about going into a very precise computation; it is hardly worth while.

A. Well, fifteen or twenty; may be more.

Q. Was his credit good with you previous to this last year?

A. In the beginning of his dealings with me, I used to credit him; I have not done so within the last three years, though. He has always paid me cash within the last three years. Before that time he used to have a credit.

Q. Why would you not trust him within the last years?

A. We had had some difficulty before in our transactions; and after we got settled up, on the square, I preferred to deal with him for cash.

Q. Did he ask for any credit within the last year?

A. Within the last two years he has.

Q. I mean within the last year.

A. Not within the last year, I think.

Q. Have you stated all the reasons why you would not trust him during the last year?

A. During the last year, I do not know that he has asked for credit at all. He gave his orders, and paid for them when the articles were done.

Q. Suppose he had asked for credit?

A. Then I should not have trusted him.

Q. Why not?

A. Because I thought a man who bought as many clothes as he did, and such priced articles, was not to be trusted. I should not have liked to have trusted him.

Q. Can you give any more definite reason?

A. I did not know, at the time that I was making him clothes, anything about his business—what he was doing. I saw he was very extravagant, and I did not think he ought to have credit. I should not like to credit men spending as much money as he did, and doing as he was doing.

Q. What was the nature of the last order he left with you?

A. He ordered a coat, one pair of pants, and two waistcoats, and said at the same time that if I thought he wanted any thing more, I could make him up what I thought he wanted, or necessary for him to have.

Cross-examined by Mr. Noyes.

Q. When was that order given? *A.* The last order?

Q. Yes, Sir. *A.* I guess it was in September.

Q. Early or late in September? *A.* About the 20th, I think.

Q. Did he select the cloth himself, usually?

A. He would select the materials for his vests and pants, they being fancy goods.

Q. Did he select them judiciously? I mean in respect to elegant articles?

A. He would generally take the very best he could find.

Q. And the highest prices? *A.* Yes, Sir.

Q. How was it in reference to the coats?

A. He directed me always to make him the best that I could get up.

Q. Did he designate the color? *A.* Generally the color.

Q. Generally the color, and then the best that you could make up?

A. Yes.

Q. Did you ever know an instance of his taking or selecting an inferior quality? *A.* I do not know that I do, particularly.

Q. How were his selections made when he first commenced with you, five or six years ago? Were they on the same expensive scale with regard to price and quality?

A. No, Sir. He was much more careful in making his selections then.

Q. When did he begin to elevate his views?

A. Within the last year.

Q. Is $600 or $700 a year a usual amount of expenditure for some gentlemen's clothes? *A.* It is a pretty good bill.

Q. Undoubtedly. Are there not many instances in which it is exceeded?

A. I have heard of some.

Q. What is the usual bill of a gentleman who dresses well, moves in good society, and is reasonably prudent for a year

A. $250 or $300.

Q. About what amount were his selections in the period of his first business with you? *A.* $150 a year probably.

Q. How long did that continue so? *A.* Three or four years.

Q. It began to increase gradually until the last year, until it got up to the large sum of which you have spoken? *A.* Yes.

A Juror (Mr. Samuels): Previous to the garments being finished, did Mr. Huntington call upon you to have them fitted?

A. He would generally step in and try them on.

Mr. Noyes: And when he took them away he paid the money?

A. Yes.

Q. You say he asked for credit twice? *A.* Yes.

Q. What directions did he give to you?

A. He used to direct me to make them up, and then pay the money for them.

Charles E. Clarke sworn; examined by Mr. Bryan.

Q. Where do you reside? *A.* I reside in Buffalo.

Q. Are you related to the family of the Huntingtons? *A.* Yes.

Q. In what way?

A. The daughter of Mr. Huntington is my wife.

Q. The daughter of Israel Huntington? *A.* Yes.

Q. Have you been acquainted with Charles, and how long?

A. I first saw him in 1835.

Q. How old was he then?

A. I should think he was 12 or 14 years of age.

Q. Were you sufficiently well acquainted with him, and for some time afterwards, so that you could state his conduct?

A. I was not much acquainted with him for several years after I knew him. I did not know any thing about his peculiarities, excepting from representations from members of his family.

Q. Since Huntington has resided in New York have you been acquainted with the nature of his business and affairs?

A. Well, I have to some extent, Sir.

Q. Have you corresponded with him frequently? *A.* Yes, Sir.

Q. Has he kept you advised from time to time of the character of his operations? *A.* He has written to me frequently about them.

Q. Has he solicited aid from you? *A.* Yes.

Q. With regard to those operations? *A.* Yes, Sir.

Q. Do you recollect a transaction relating to some liquors?

A. In the spring of 1852, I think, or in the winter, he wrote to me, stating that he had bought a quantity of valuable merchandize,—that he had turned out two houses and lots in Middletown, upon the Erie Railroad, and was to pay the balance in cash ($1,800), and he drew upon me for it, I think, at ten days, and wished me to accept the draft. The merchandise he represented as being very valuable, and that he should make a good deal of money out of it. I accepted the draft, and wrote back to him to ascertain of what the merchandise consisted, and he replied, that it consisted of a quantity of liquors, which he represented in his letter that he could adulterate to a very great extent, and make a great deal of money out of them. He was to send me the money to meet the draft when it became due. I did not hear any thing of it until after the draft was protested. I did not pay

the draft. I supposed there was something wrong about it, and I let the draft go to protest. I afterwards came to the city of New-York to see about that, and some other things. He then told me that he had not done anything with the liquors for he thought his process of adulteration would not work, that the liquors were in a store-house in the city, and he went and showed them to me, and turned them out to me. I went to the person who had it in store to ascertain if it was of much value—if any value, and he said that it was not of any value in the market. It had no market value.

Q. Was anything realized from it?

A. Never. It never was sold, as I understood, except by the man who had it in the store—the warehouseman.

Q. For storage, or something of that kind?

A. It was sold, I understood, to pay the storage.

Q. What did you know of his Cemetery projects?

Q. In the Spring of 1849 I think, or the Winter, he wrote to me, suggesting the purchase of 40 acres of land in the vicinity of Buffalo, to convert it into a Cemetery, stating that such a piece of land might be cut up into 12,000 lots, and sold for $100 a lot, making a sum of $1,200,000. He thought it would take about five years to accomplish the whole thing and close it up.

Q. Did you pay any attention to that proposition? *A.* No.

Q. What do you know of the Androscoggin affair, if anything?

A. I was, I think, in the city of New-York in 1853, and he then related to me the purchase of a plot of ground there, and the charter he had obtained for a Bank. I think he represented to me that the lands could be sold for one million, or, one million and a half, I do not recollect which. He was rather anxious that I should take a little interest in the Bank.

Q. Did you? *A.* No.

Q. What do you know about the Steam Laundry?

A. I understood that he expended a large sum—

Mr. Noyes: That won't do.

Witness: I do not know any thing about it, except from what he and Mr. Randal have represented to me.

Q. Do you know any thing about his prior forgeries?

A. All that I know, I think, was through—

Mr. Noyes: Of your own knowledge?

Mr. Bryan: As matter of history.

Mr. Noyes: That won't do. It is matter of history that cannot be admitted.

Mr. Bryan: *Q.* Your knowledge, then, is only from hearsay?

A. That is all, Sir.

Q. You heard of these at the time? *A.* Yes.

Q. About how long ago was it that you heard of these?

A. 1852, I should think.

Q. During the time that you had known him, and while he resided in New York, did you know anything of his "ups and downs" in life?

A. Yes, Sir, something.

Q. How often was he up and down?

A. In the fall of 1848 he was very poor indeed.

Q. That was after the failure of the firm of Huntington and Linsey?

A. Yes.

Q. Did he receive any assistance from you?

A. He received about $1200 from me in the fall of 1848.

Q. About how often was it that he was up and down during this period?

A. His prospects were rather better in the spring of 1849, as I supposed. In 1850—previous to the time he purchased these liquors, he was poor—broke up, and had to send his wife home to be supported.

Q. Come along down through the whole period, and tell us briefly how his fortunes fluctuated.

A. I should think he remained in very indigent circumstances during

Q. Go on.

the year 1850.

A. In 1851 I think he was in a better condition,—that is my impression about it,—and remained so until some time in 1852, I think. I thought he was doing pretty well during the fore part of 1852.

Q. Were there any capitalists behind him at that time that you know of?

A. I never knew of his ever having any aid from any quarter. In the fall of 1852, I should think, or the winter, he became very much reduced again, and, as I understood, got into serious trouble. It was after the establishment of his bank. He then wrote to me, imploring me to aid him again, to get him out of that difficulty.

Q. Did you do it?

A. I did it to a small amount at that time. He did not recover from this, until, I should think, 1854. In the fall of 1853, he sent to me for aid to go to California, and I finally assisted him with some money to go. I think he remained there three or four months, and came back some time in the early part of 1854, and I was not aware of his doing much, or having any thing. I think in the fall of 1854 he got into some kind of business—did something by which he raised some money.

Q. Be as expeditious as possible.

A. I did not know a great deal about his condition in 1855. He did not write to me that I recollect during that year. In the winter of 1856 he was doing the money business in Wall street. I was here in the spring of 1856—in April. He was then doing, as he represented, a pretty large moneyed business, and he lived at No. 100 East 22d Street.

Q. Just state, briefly, in what style?

A. He was living in very elegant style. I should regard it as very extravagant.

Q. What explanation did he give of it, if any?

A. Well, Sir, he told me that he was established in business, then, on a solid basis—that he purchased nothing in the world but what he paid for. Every thing he had was paid for, and he contracted no debts. I think he represented at that time that he was operating upon a capital of about $150,000.

Q. Was he remonstrated with for his extravagance at that time?

A. I talked to him about it. I told him that I thought he was very extravagant, and his conduct was very improper and unbecoming for a man in his circumstances, who had a very large number of creditors.—I do not know when he obtained his release. I understood he obtained it some time in 1855.

Q. In 1855?

A. I do not know when he obtained his release. I told him then that

I thought if he was doing such a profitable business, he ought to lay up something—he ought to provide something for his family, for they had been in most indigent and deplorable circumstances from time to time. He then stated that his business was established upon a solid and permanent basis; that he had no fear of failing—that every thing he had was paid for—every article he had in the world.

Q. Then shortly afterwards he moved into No. 86 East 22d Street?

A. Yes.

Q. Did you see that establishment? *A.* Yes.

Q. What was the style of it?

A. The house was very expensively furnished—very expensively indeed, I should think.

Q. Give us a description of the contents?

A. Well, Sir, I went into the reception-room, which was a small room about eight feet wide, and ten or twelve feet long. There was a very large *etagere* in one corner, and a small one in another corner; there was a table with a great many ornaments upon it. There was a medium-sized sofa, something between a *tete-a-tete* and a common sofa. There was a very large arm-chair, and several large, heavy chairs, and two or three small ones, and one or two ottomans. In fact, it was very difficult to get into the room to sit down. There were large vases upon the mantel-piece. The etageres were very elegant, and very expensively finished. There were all sorts of ornaments.

Q. Was the furniture rosewood? *A.* It was.

Q. Carved? *A.* Yes.

Q. Do you know any thing about the silver plate, or gold spoons?

A. I did not know any thing about gold spoons, but he had a great deal of silver plate.

Q. Did you ever see the table set with it? *A.* Yes.

Q. How were the parlors furnished?

A. They were furnished in a manner to correspond with the room I have described, but much more expensively. There was a very large number of vases.

Q. State the value or cost of some of them?

A. His wife informed me that several pairs of vases cost $500 a pair. I think there was a pair of vases upon each parlor mantel, and there was a pair standing at the foot of the mantel upon each side, and then I think there was a pair standing out a little from that, about where the hearth rug was—at the outside of the hearth rug. Then there were different kinds of vases on the center table. There was a niche in the stairway that had a very extravagant vase in it.

Q. How high a price did a pair of those vases reach, as you understood at that time?

A. They told me that these large vases cost from $250 to $500 apiece.

Q. Do you know any thing of his having a band of music in his house to make pleasant his hours of tediousness?

A. I never heard the music. I understood they did.

Mr. Noyes: You had better get somebody else to prove that?

Mr. Bryan: Do you know any thing of this purchase of horses?

A. My son was in New York last summer, in August or July, I should think, and he returned and told me that Huntington wanted him to purchase a very—

Mr. Noyes: He can hardly tell us what his son said.

Mr. Bryan: We expect to connect it with Huntington's own declarations.

Q. Did Mr. Huntington write a letter with reference to that matter?

A. Yes.

Q. Whose horses were they?

A. They belonged to a man of the name of Mills.

Q. What was the price of them?

A. $5000, I understood.

Q. Did he buy them? *A.* No.

Q. Why not?

A. My son spoke to me about it, and told me that his uncle (Charles B. Huntington) wanted that I should buy the horses. I told him that I should not be identified with such a piece of sheer folly, and that he should have nothing to do with it. He insisted upon it. I said to my son: "Charles, your uncle is an unmitigated fool, and more fit for a lunatic asylum, than he is to do business in Wall Street." The horses were not purchased. I told him, however, that if Huntington wanted the horses, he (Huntington) might send a man up and purchase them;—that neither himself nor any member of my family should have any thing to do with so ridiculous a thing.

Q. How many horses did Huntington have at this time?

A. I cannot say of my own knowledge, only from what I have heard.

Q. Have you heard of it in common talk in the family?

A. My son told me that he had six.

Q. About when was this?

A. I cannot tell whether it was in last July or August. It was sometime in the summer.

Q. Was he in the habit of smoking? *A.* Yes, Sir.

Q. How much so?

A. Well, Sir, he is the greatest smoker I ever saw in my life.

Q. Has he ever been remonstrated with for that? *A.* Yes.

Q. For what reason? What was he told about that?

A. He has been told a great many times that it would kill him.

Q. Did he stop?

A. Never knew him to stop it, excepting as I have seen him sitting here in court.

Q. Do you know any thing of his making provision for his family during his prosperity?

A. I do not, Sir. I do not think he could keep a thousand dollars over night if he had it.

Q. How long is it since you formed that opinion of him?

A. Well, Sir, it is since 1850.

Q. Now, during this last year's prosperity, have you suspected any thing, or been apprehensive that any thing would occur? *A.* Yes, Sir.

Q. Describe your apprehensions.

A. Well, Sir, I was prepared to hear any day that he had "blown up." I expected it for the last six months.

Q. What was the feeling of his family upon that subject?

A. They were very apprehensive that he would fail, and involve himself in trouble.

Q. How did his wife feel about it?

A. I cannot say so much in reference to that. She was an invalid.

Q. Was she visiting you during any portion of this time? *A.* Yes.

Q. For how long?

A. She visited us in the winter of 1856, and was with us perhaps six weeks, or two months, and then again in the summer, and she left a day or two before he failed. She had said he had frequently—

Mr. Noyes objected. He could tell his own emotions, although that was hardly within the rule, but not what Mrs. Huntington said.

Mr. Bryan: Did he send any thing to his wife, while she was there previous to his arrest?

A. He remitted some small sums of money.

Q. What was his habit in regard to supplying her with funds?

A. He did not supply her with money.

Q. Was that a noticeable fact? *A.* Yes, Sir.

Q. Spoken of? *A.* Yes, Sir.

Q. Did you pay any of her expenses?

A. I paid her expenses, and the girl's that was with her from here to New York, as well as a doctor's bill, and some others in Buffalo.

Q. Why did you do that? Had she not money to pay her expenses?

A. I do not know whether she had or not,—she did not offer to pay it.

Q. Did he send her any thing—any articles?

A. He used to send her clothing.

Q. Describe how he sent it?

A. I should think that during the last time she was there, he sent her perhaps four dresses.

Q. How did he send them, separately or altogether?

A. I do not know but that there were only three. I think they came separately, in different trunks, at different times.

Q. By express? *A.* Yes, Sir.

Q. Each one was contained in a separate trunk? *A.* Yes, Sir.

Q. Were they articles that she needed? *A.* I should think not, Sir.

Q. Have you ever been present during the past year, when he had been applied to by beggars, or persons with subscription lists, or any thing of that kind?

A. I recollect when I was here in April last that I was in his office, and a colored man came in and asked him to give him a dollar to help to enable him to redeem his wife from slavery, and he took out a bill, and gave it to him. The man told him that it was a three-dollar bill, and he said, "Never mind, take it."

Q. Do you know of his making objections to the defence of insanity?

Mr. Noyes objected to the introduction of this testimony.

The Court: I think this just as proper as a vast amount of the evidence that has been given here, without objection on either side.

Q. (Repeated.) *A.* I do.

Q. What do you know concerning Huntington's objecting to this defence of insanity?

A. The first time I saw him after I had arrived in the city of New York, he objected to it.

Q. Had you heard that any thing of this kind had been contemplated before you came here?

A. I was advised that it was contemplated.

Q. Who advised you of it? *A.* My father-in-law.

Q. When? *A.* Perhaps two or three weeks ago.

Q. On the occasion of my (*Mr. Bryan*) going to Syracuse to see him?

A. Yes.

Q. You received that intelligence by letter? *A.* Yes, Sir.

Q. Was it objected to by his family? *A.* It was, Sir.

Mr Noyes: Do you mean his own family?

A. It was objected to by me, and I requested my wife to write to her father to prevent any such thing.

Mr. Bryan: For what reason?

A. I did not know any thing about it. I did not know that such testimony, substantiating insanity, could be put before the Court in a legal form; and I had other objections.

Q. What were those?

A. I did not think it was a good plea. I never favored the plea of insanity very much.

Mr. Brady: I believe nobody does.

Mr. Bryan (*in continuation*): Did you object because it would cast a stigma upon your family? *A.* Yes, Sir.

Q. That was the reason, was it? *A.* Yes, the principal reason.

Q. The family pride was involved? *A.* I suppose so.

Q. How long did this feeling continue, and what was its progress?

A. It continued up to the evening after the prosecution rested their case. Perhaps it is proper for me to state, that there was a consultation among the members of Mr. Huntington's family here, to which Mr. Bryan alluded in his opening, and Mr. Bryan stated———

Mr. Bryan: Never mind that.

The Witness: And at last Mr. Huntington's family consented to it.

Q. You overcame their scruples? *A.* Yes, Sir.

Q. Do you know of the defendant objecting to the defence?

A. I saw the defendant immediately on coming down the next morning.

Q. Do not state what took place—only give the results.

A. He did object to it, and said he would not suffer it. That was when I saw him one morning after the consultation.

Q. What reason did he give?

A. He gave this reason, that his conduct could all be reconciled with his innocence.

Q. As the testimony then stood? *A.* Yes, Sir.

Q. Did he say any thing about the defence injuring him?

A. Yes, Sir; he said that the defence would cast a stigma upon his family—upon his children.

Q. Was any thing said about his going into business again?

A. Yes, it would injure him if he should want ever to go into business again.

Q. Was he finally persuaded to permit it? *A.* He was.

Q. Now, from what you know of him in his career of business, what is your opinion as to his shrewdness, forethought and caution as a business man?

Mr. Noyes: It strikes me that this question is not competent upon such a defence as this. Nothing is competent here, except it tends to illustrate

the question whether he was capable of discriminating between right and wrong in regard to the act of forgery. His want of "shrewdness, forethought and caution as a business man" has nothing to do with this case. If it be so, then all men, with no particular shrewdness, forethought or caution, may commit forgery with impunity. This would be rather a new, and certainly a startling doctrine.

Mr. Brady: I presume that these will be the remarks every time the gentleman rises to address your Honor. I have read, I suppose a hundred pages at least of just such observations as my learned friend has made, in the printed books, and I have read very considerable of the same sort from the newspapers, some of which I shall allude to as part of my summing up. The prosecution in all cases has said, when the defence of insanity was raised on behalf of the prisoner, "if you let this man off, we shall never be safe for a moment."

Now, Sir, Lord Denman thought that the opinion of a medical witness was not conclusive, if received upon a question of moral insanity, because he said physicians were no better qualified to form an opinion upon the subject than any other man. That would seem to favor the idea that we can ask these questions of this witness. I apprehend that if it ever become important in a court of justice to prove the business capacity of any man, it should be done by opinion.

The Court: I can see that this question would be proper for the purpose of showing, if it were so, that this man's mind was not so strong as some other men's minds. I think it is admissible under the manner in which we have tried the case all the way through.

Witness: I should think he had no forethought, no caution, and very little shrewdness in any legitimate business transaction, if any.

Q. What do you know of his destructiveness, either as matter of history, or talk in the family? *A.* I only know ——

Mr. Noyes: Be confined to facts and not to history. Any thing he knows himself he can state.

The Witness: In reference to his propensity to destroy things, I have no personal knowledge, except as matter of history and from hearsay.

Cross-examined by Mr. Noyes.

Q. You are a lawyer, I believe?

A. I was educated a lawyer, but I have not practised for a great many years.

Q. Mrs. Huntington was staying at your house in what month?

A. In the month of September, and the forepart of October.

Q. Shortly before this explosion? *A.* Yes.

Q. Was she there in the summer?

A. I think she came in the month of September.

Q. Did he go out with her? *A.* No, Sir.

Q. Who did?

A. She went out to Saratoga with her father, as I understand. I went to Saratoga to accompany her when she came to Buffalo.

Q. She spent some time at Saratoga, her father being there before she went to Buffalo? *A.* Yes.

Q. How long did she stay at Saratoga?

A. My impression is that she stayed there a fortnight or three weeks.

Q. At what house? *A.* The Union Hotel, or Union Hall.

Q. Was Huntington there during that time?

A. No, Sir,—I understood not.

Q. What member of her family did she take with her?

A. She had a girl who had lived with her for a long time.

Q. And the children? *A.* No.

Q. Where were the children?

A. I do not know whether they were at home or at New London.

Q. She went then, from there to Buffalo with you?

A. Yes. She was an invalid.

Q. Was it during the time that she remained at Buffalo that she received the three dresses of which you have spoken? *A.* Yes, Sir.

Q. Each in three several trunks, or rather, each in one trunk?

A. Yes.

Q. Were they expensive dresses? *A.* I should think they were.

Q. How expensive?

A. Well, Sir, I cannot tell. I have no knowledge as to it myself. I should think they were elegant dresses.

Q. Thirty, fifty, or sixty dollars apiece?

A. I should think they were—perhaps more.

Q. What sort of trunks did they come in?

A. They came in cheap, small-sized, black wood trunks.

Q. Was Mrs. Huntington generally very well dressed indeed?

A. Very.

Q. Did she have a great deal of jewelry? *A.* Yes, a good deal.

Q. What was the amount in value? *A.* I could not tell.

Q. Did you learn? *A.* I did not.

Q. Did she wear it a good deal? *A.* Yes.

Q. At Saratoga and at Buffalo?

A. I did not remain at Saratoga at all. I arrived there in the evening, and we left the next morning.

Q. Was the jewelry in your judgment worth a $1,000?

A. Well I think it was worth several thousands.

Q. Do you know what became of it? *A.* No, Sir.

Q. Was her wardrobe very expensive, aside from these dresses?

A. I think it was. It was a very ample wardrobe.

Q. How long did she remain with you in all?

A. I should think she might have remained four weeks.

Q. Did Mr. Huntington write to you during the time that she was with you? *A.* I think he did.

Q. Have you the letters? *A.* No.

Q. Where are they?

A. I do not think I ever preserved them. I was not in the habit of keeping a file of his letters.

Q. How early was it that you began to apprehend an explosion?

A. From what I have known of the man, I have always apprehended it for a number of years.

Q. Has there ever been a time since you have known him as a man, when you have not apprehended some explosion?

A. Not since 1850, I think.

Q. An explosion from what?

A. From miscalculations in all his business matters—illegitimate business transactions.

Q. Now, Sir, what do you mean by illegitimate business transactions?

A. I mean those that are not founded upon any regular business principle. I never knew that he did business upon any settled business principle.

Q. Has he been what is called a speculator?

A. Well, I should think he had been pretty extensively.

Q. He has never been in any solid, substantial business, to your knowledge?

A. Not since 1850, unless his business in 1856, in Wall Street, might be called so.

Q. Did you apprehend, Sir, any explosion from his committing crimes?

A. Well, I had great fears of it, Sir.

Q. Will you have the goodness to state why?

A. Because, for the reason that he was so utterly destitute of any method in his business—of any caution, of any forethought, and of any business calculation.

Q. Do you mean that he was so utterly reckless, that you apprehended he would commit crimes leading to an explosion?

A. Well, Sir, I do not know that I could say so from his recklessness, but from the immethodical manner in which all his business matters were planned and attempted to be carried into execution, and from his very extravagant habits. I never looked for any thing but a failure within the last six months.

Q. When did you first hear of his forgeries?

A. This last.

Q. No, the first. When did you first hear of any forgery?

A. I cannot tell. I only heard from one source. Mr. Randel told me with reference to one.

Q. When did you hear of that first?

A. I do not know whether it was 1852 or 1853. I can state precisely what that was.

Q. State, if you please.

A. He said that Huntington had made use of Mr. Griffin's name, and might have got himself into serious trouble, if Griffin had not been very kindly disposed towards him. That was all that was said about it.

Q. Was that all you knew about his forgeries? *A.* Yes.

Q. Did you or not, apprehend an explosion from his committing other forgeries? Did you not fear it?

A. I cannot say that the idea of forgery entered my mind, but the idea of some kind of illegitimate or illegal business transaction.

Q. Do you mean by that, Mr. Huntington's efforts to get money by dishonest means?

A. Well, Sir, I cannot say that I did exactly.

Q. If it is qualified, please to qualify it.

A. My idea was that he was so destitute of caution and forethought, that he would be led in some way to obtain the confidence of business men, to obtain money, and to abuse their confidence greatly.

Q. When you speak of wanting caution and forethought, did your fears arise in any respect from his want, in your judgment, of proper moral notions, upon the subject of acquisition?

A. In a measure from that, I suppose.

Q. Then your fears were founded, in part, upon your apprehension of his want of integrity in his transactions?

A. From what I had known of him, I did not suppose that he had a very strong sense of what real integrity was—did not understand any thing about legitimate business, one way or the other.

Q. Now, you have heard of this forgery in 1852–53; you knew he was going on with occasional elevations and depressions in his business in New York, and you saw yourself that he was living in unusual splendor, having emerged from comparative poverty: did any thing occur to you that it was necessary to restrain him on the score of imbecility? *A.* I thought so.

Q. You thought he ought to be restrained? *A.* Yes.

Q. When did you first think so? *A.* In the month of April, 1856.

Q. Did you take any measures? *A.* I remonstrated with him.

Q. I refer to legal restraint. *A.* No, Sir.

Q. You thought he ought to be remonstrated with in relation to the apparent recklessness of his course? *A.* Yes.

Q. And you did remonstrate with him in the very proper manner that you have mentioned? *A.* Yes.

A. How did he tell you upon those occasions that he had acquired this $150,000 of capital? *A.* He never told me any thing about it.

A. Did you ask him? *A.* No, Sir.

Q. You never had any thought of setting up the defence of insanity for him until it was suggested to you, I think you said, by his father?

A. His father wrote to me that his counsel suggested it.

Q. And that was how long ago? *A.* Three or four weeks ago.

A. You have said also, that after the case was closed for the prosecution here last week, there was a family consultation as to what line of defence should be adopted? *A.* Yes.

Q. Was any paper read to that family consultation? *A.* I believe there was a paper there. There were statements made from it; it was not read. I understood it was an outline of the opening.

Q. Was the outline of that opening read to that family consultation?

A. Portions of it were stated.

A. Was it after that was done that the general assent of the family was given to the defence of insanity? *A.* Yes, Sir.

Q. And after that I understood that you talked with Huntington about it. *A.* Yes.

Q. And he finally yielded to that defence being put in? *A.* Yes, Sir.

Q. Have you any of his letters with you? *A.* No, Sir.

Q. Have you any of them preserved at home?

A. I do not think I have for the last two years.

Q. Were any of his letters to you wild or incoherent?

A. Well, Sir, some were very, I thought.

Q. In what respect? *A.* In regard to the success of his business.

Q. In regard to his plans being practicable?

A. He did not develop any plan, only the extent of his business.

Q. When were those written? *A.* I received two or three last summer.

Q. About his business?

A. Just referring to his business. These letters were not written to me for the purpose of communicating any thing in regard to his business transactions, but these remarks were incidental.

Q. You say you are not aware that he ever made any provision for his own family? *A.* Yes.

Q. Did he make provision for any member not immediately of his own family? *A.* Not that I am aware of.

Q. Not for his wife's family? *A.* Not that I know of.

Q. Do you know any thing about his having bought a place for them?

A. I have no knowledge of it.

Q. Now, Sir, to what extent has he drawn you into obligations or advances for him?

A. Well, several thousand dollars.

Q. State as near as you can, about how much?

A. I was not drawn into all of these. I let him have, or he took moneys of mine in his hands in 1848, amounting to $1,200.

Q. Did he take it without your consent?

A. Well, he used it. I suppose he had liberty to use it during the time he had it; and he represented himself as being unfortunate in the use of it, and having lost a portion of it.

Q. Will you state how much you have been drawn into by him?

A. In the winter of 1850, when he was reduced very low, I think I accepted, prior to this liquor business, and paid a draft of his to the amount of perhaps $2,000.

Q. How much, in all, have you been drawn into in his operations?

A. That is all. What other assistance I rendered him has been voluntary, in small sums.

Q. Were you drawn into these matters by representations which were true or false?

A. The drafts that I accepted for him at first, were accepted to relieve him from poverty, and to enable me to start him in business, if possible. I gave him a draft to pay for the liquor, as I have stated, and he represented that he had made a very profitable trade, and expected to make a great deal of money out of it.

Q. Were the representations generally upon which you have been induced to advance him money or your credit, true or false?

A. I do not think he ever made any representations to me to induce me to advance him money, excepting in regard to his poverty, save the liquor business.

Q. Those in regard to his poverty were true?

A. Yes, but I did not expect to pay those drafts—only a portion of them.

Q. The plan he had in regard to the liquor was, to adulterate it, and sell it at a large profit? *A.* Yes.

Q. And that process failed?

A. He said when I saw him next, that he was satisfied that the process would not work.

Q. He wrote to you then, about the Cemetery in Buffalo? *A.* Yes.

Q. Was that plan carried out? *A.* No.

Q. Was there a Cemetery at Buffalo got up? *A.* Yes.

Q. Who was concerned in it?

A. I did it entirely myself. Mr. Randel was interested with me in it.

Q. Was Huntington interested in it?

A. Not that I had any knowledge of at the time.

Q. Has that been a successful affair? *A.* Yes, Sir.

Q. To what extent?

A. It promises to be a very fair paying concern. It is not old enough to have realized large profits.

Q. But still going on successfully?

A. Yes. It has been incorporated under the general law of this State.

Q. Had you any thing to do with the Androscoggin matter?

A. No, I never touched it.

Q. And know nothing about it except from information?

A. Only what he told me.

Q. Did you know that it was a fraudulent scheme?

A. Well, Sir, I do not know any thing about the character of it, whether it was intended to be a fraud or not.

Q. What do you know about it, and from whom?

A. I knew more about it from Mr. Randel than from Mr. Huntington.

Q. What did Huntington tell you about it?

A. Huntington told me, I think it was in the summer of 1853, that he thought a great deal of money could he made out of it. He would make it out of the sale of the lands.

Q. What about the bank circulating the money?

A. He thought that might be carried on profitably.

Q. Did he not say that that was to be the chief business—having a circulation of bank notes in connection with some manufactures? *A.* Yes.

Q. Did you not understand that that was to be a fictitious affair from him—that there was to be no bank capital? *A.* No, Sir, I did not.

Q. Did you understand that there was to be a bank?

A. I understood there was to be a bank.

Q. Did he tell you how he was going to get the capital?

A. Mr. Randel was the first who spoke to me about it; and he had made some arrangement to carry the bank into execution—such as procuring bills to be printed in Boston—and he proposed to have the management of the bank, as I understood—the sole management of it.

Q. Did he ask you to go into it?

A. He did not directly. He talked to me something about advancing money.

Q. Why did you not go into it?

A. The reason was that I had not much confidence in it.

Q. These horses in Buffalo were a very fine span?

A. Yes, they were believed to be.

Q. Do you know how he heard of it?

A. I suppose that my son mentioned to him about these horses when he was here.

Q. Was the price of them $5,000. *A.* Yes.

Q. What were their peculiarities? *A.* Fast.

Q. About what time was that?

A. That must have been, I think, in the latter part of July or August.

Q. Do you know whether that was before or after he bought the fast horses from New Hampshire?

A. I understood that he had six horses at the time, but I do not know about the New Hampshire horses.

Q. When was it that he told you that he had established himself here

in business, upon a solid basis,—buying nothing upon credit,—paying for all he had, and that he owed nothing, and possessed a capital of $150,000.

A. That was in April last.

Q. When you told him he was extravagant, and his conduct was improper, in your judgment, what did he reply?

A. He replied that he was making a good deal of money, and that he was able to have all that he had purchased.

Q. Did he tell you how he was making it?

A. He said he was making it with money business. I did not understand what that was.

Q. Did he tell you that he was making it in Wall street? *A.* Yes.

Q. Did he mention the name of any body as assisting him?

A. Nobody except Bishop. When I was in his office, in April, Bishop came in and presented an account, and he introduced me to Bishop. He said that he and Bishop were operating together some—that Bishop was furnishing the money.

Q. Did you express your surprise to him at his making so much money in so short a time?

A. He said that he had a very large capital, and good facilities for making money. He wrote to me in the summer, in June or earlier, mentioning that he was making money like a "streak;" that he had just added $200,000 to his capital, thus increasing it to $350,000.

A Juror: When he was in affluent circumstances, did he repay you the money that you had loaned him? *A.* A portion of it.

Mr. Noyes: How much did he pay you?

A Well, Sir, we compromised it. I do not recollect exactly how it was paid. We never had any settlement of the matters; but we compromised it, and the thing was ended.

Q. When was that? *A.* Last summer.

Q. So that he owes you nothing now?

A. I do not regard him as indebted to me.

Q. How much money did he pay you last summer?

A. I should think $4000 or $5000.

Q. Was that in July when you were here?

A. Yes; and he had paid me something previous.

Q. He had paid you several thousands in the course of the summer?

A. Yes.

Q. Did you not sign the release several years ago? *A.* No, Sir.

Q. Do you know whose handwriting that is (handing paper entitled "judgments")? *A.* I do not think I do, Sir.

Q. Look along, and see if you can perceive any of Huntington's handwriting upon it?

A. This in pencil marks is his handwriting; all of it, I should think.

Q. What are the words in pencil?

A. "Paid." I do not see any other portion that appears to be in his handwriting.

A Juror: At the time that Mrs. Huntington had this large amount of jewelry, do you recollect what it consisted of? You stated, I think, that it was worth some thousands.

A. It consisted of rings, necklaces, bracelets and pins.

Mr. Noyes: Diamonds, were they not? *A.* Yes, principally.

Q. Do you know what became of them? *A.* No, Sir.

Q. Were they sent to Buffalo about the time of Huntington's arrest?

A. No, Sir. They were sent by express from Saratoga to Buffalo, when she was there.

Q. Then where did they go? *A.* To New York.

Q. To whom? *A.* To the care of Charles B. Huntington.

Q. What time was that? *A.* They were sent before the arrest.

Q. By express? *A.* Yes, Sir.

Q. Do you know what was done with them then?

A. No.

Q. Has Huntington told you since? *A.* No.

Q. Has Mrs. Huntington? *A.* No, Sir.

Q. And you do not know where they are?

A. I do not know any thing about them.

Q. Do you know whether they went to the Clarendon Hotel?

A. Only from what Mr. Halsey told me.

Q. Are you certain that it was before the explosion, that they were sent down here from Buffalo?

A. Mrs. Huntington left Buffalo, I think, on Thursday morning, stopped in Syracuse over night, and arrived here on Friday night.

Q. Who came with her? *A.* My son.

Q Did the jewelry come by express in advance of her, or was it sent the same day? *A.* It was sent the same day.

Q. Thursday was the day he was arrested?

A. Yes, but we heard nothing of it in Buffalo until Friday night. I first heard of it through the newspapers.

Q. And she came on with your son, and the jewelry came on the same day, and was sent to Huntington.

A. I believe it came on the same day. It was put into the express office on the same day.

Mr. Noyes: I will now put in this list of judgments.

Witness: It is possible that there may be some names marked "paid" that I do not see, that are not in his handwriting.

Q. Look at it with care (handing paper).

A. There is so great a variety of writings *here*, and these words vary so much that it would be impossible for me to tell, excepting as to portions of them.

Q. Look and see whether some of the last entries are his?

A. I cannot say in regard to these last ones. One or two of the last ones appear to be in his hand-writing. Some of those marked "paid" it is very difficult to tell who wrote them.

Q. They appear to be in his handwriting?

A. I should think they were, Sir.

Mr Noyes here read the list of judgments, the total amounting to $133,411,47.

[For this paper see *post*].

Re-examined by Mr. Brady.

Q. When Huntington wrote to you that he was making money like a "streak," and that he was adding $200,000 to his capital of $150.000, was it to obtain any thing from you? *A.* No, Sir.

Samuel Barry, sworn. Examined by Mr. Bryan.

Q. Are you the father of Huntington's wife? *A.* I am.

Q. Where have you resided for many years past?

A. New London, Connecticut.

Q. During the time of Mr. Huntington's residing in New York with his family, have you been in the habit of visiting him occasionally?

A. Occasionally, Sir,—no more than when I was in New York on business.

Q. What is your business? *A.* The sail-making business.

Q. Since he has been married, have you had to support his family at any time?

A. His wife and children have been at my house for a considerable time.

Q. For what reason?

A. I did not inquire particularly for what reasons. I do not know as I like to say what the reasons were, for I suppose you know.

Q. When was it that his wife first had to come home?

A. I think it was in 1852 or 1853—'53 say. I have no record here of it.

Q. How long did she stay?

A. She stayed, I should judge, six or eight months; it might be more, it might be less.

Q. Has she been there since? *A.* Yes, Sir.

Q. Under similar circumstances? *A.* She has been there———

Q. Have you taken care of the children during any of the time?

A. I have, Sir. The children have been at my house most of the time.

Q. Do you know any thing about his destructiveness while you have been visiting him here?

A. I do not know that I can answer that question particularly. I have known him to cut his boots and cut his slippers, &c.

Q. To any considerable extent?

A. I should consider it so if they were mine.

Q. Have you visited in his family during the past year, when he lived in 22d street? *A.* Yes.

Q. Did you hear Mr. Clarke describe the contents of his house, No. 86 East Twenty Second Street? *A.* I did.

Q. Did he describe it correctly as far as he went?

A. I do not think he made addition enough.

Q. What additions can you make?

A. I do not know that I can make any more, only that it was very extravagant.

Q. What were the highest-priced vases there?

A. I understood that some of them were $700 a piece.

Q. Do you know any thing of his buying a dog?

A. I know that he had a very large dog.

Q. I speak of the small one—how much did that weigh?

A. It may be two pounds—perhaps three (laughter). It was the smallest dog I ever saw.

Q. How much did he give for it? *A.* $36.

Q. What did the big one weigh?

A. He was the largest dog I ever saw. I should think he weighed one hundred and fifty pounds.

Q. How many servants did he have?

A. He had nearly a house full, if I may be allowed the term.

Q. During the absence of his wife?
A. Yes, I should think eight or ten.
Q. State what they were?
A. Grooms, drivers and maid-servants.
Q. How many coachmen did he have?
A. I should think two or three.
Q. How many grooms?
A. I should think two drivers, and two grooms.
Q. Did he have a man waiter? *A.* Yes.
Q. How many girls were in the house?
A. About four or five.
Q. One was a cook? *A.* Yes.
Q. Did she have an assistant? *A.* Yes, I believe she had.
Q. First and second cook? (Laughter). *A.* Yes, Sir.
Q. What other female servants did he have? *A.* Chambermaids.
Q. How many did he have?
A. I believe about two, if I recollect right. There may not have been more than one, but two I should judge.
Q. That was while his wife was absent? *A.* Yes.
Q. When she came home, were they discharged?
A. They were discharged before she came home—two or three of them.
Q. Was there a band of music in the house?
A. I understood that there was music.
Mr. Noyes: Tell what you know?
A. I was not there to hear it.
Mr. Bryan: *Q.* Did you see any thing which evidenced any desire for change? *A.* In what respect?
Q. In all his arrangements about the house-purchases, &c.?
A. He frequently made purchases—every day nearly.
Q. Something came home nearly every day?
A. Yes, Sir, while I was there.
Q. What was the nature of those things?
A. There was so much variety that I do not know that I can enumerate them.
Q. While you were there did he ever have the silver spread on the table—meals served up on the silver? *A.* He did.
Q. On what day did he usually have that?
A. On the Sabbath.
Q. Was he particular about his meals? *A.* Rather.
Q. How much have you known one of his dinners to cost?
A. I am not able to say how much.
Q. Have you known of any occasion when he has ordered a sumptuous banquet to be prepared?
Mr. Noyes objected as leading.
Mr. Bryan concurred with his learned friend that it was leading, but he adopted that course of examination with a view to save time.
Q. Have you known him to order a sumptuous banquet to be prepared at any time?
A. I understood that he ordered his dinners, and then dined down town.
Q. Did you ever know of a *banquet* to be prepared, and his not coming home to it? *A.* Not that I know of.

Q. Did you ever know of a banquet being prepared with much care, and his sitting down to it alone? *A.* I cannot say that I do.

Q. Was he in the habit of having much company?

A. He had company occasionally. I was not there always. It was only occasionally that I was there.

Q. Do you know any thing about his breaking things in the house?

A. No, Sir.

Q. Do you know any thing about the number of horses he had?

A. I understood he had six or eight.

Q. Do you know any thing about his preparing a stable shortly prior to his arrest?

A. I know that he was preparing one for his own use.

Q. Do you know of his making preparations to take a residence in the country, near the city?

A. I know that he had purchased a piece of land up at Yonkers, or in that vicinity.

Q. For that purpose? *A.* Yes.

Q. Shortly before his arrest?

A. I do not know shortly before, but it was prior to his arrest.

Q. Do you know of his giving his wife money or not? What was his habit in that respect?

A. He gave her money occasionally—pin-money, as you may say, but nothing to any amount.

Q. In large quantities? *A.* I should judge not.

Q. Did he give it to her in such small quantities that it was noticed?

A. He gave it in such small quantities that she remonstrated, and said that it was not enough.

Q. Do you know of his having a project on hand, to get up a company to export ice from this section of country to Panama?

A. I heard something of it.

Q. Round the Horn? *A.* I did, or that he had such a project in view.

Q. Now during all his prosperity, did he do any thing for your family?

A. He let two of my sons at the South have some money.

Q. Who were they?

A. Homer Barry, and Thomas Barry. He let Homer have it.

Q. Where do they live? *A.* In Wilmington, Delaware.

Q. He loaned them some money? *A.* Yes; at least I understood so.

Q. Do you know how much? *A.* No, Sir.

Q. What was their business? *A.* Ship chandlers.

Q. Did his assignee afterwards get it back?

A. I understood that they made a compromise.

Q. Mr. Halsey, or his lawyer went on there?

A. I understood so.

Q. And got it back again? *A.* Yes, Sir.

Q. Were you present when Huntington administered a lecture to those young men, after his arrest? *A.* No, Sir.

Q. At the time of his arrest, were you in his debt or he in yours?

A. I take it, he is in mine.

Q. Had you loaned him money? *A.* I had paid money for him.

Q. Upon his drafts? *A.* Upon his drafts or checks.

Q. To what amount? *A.* The whole?

Q. Yes?

A. I cannot say—quite a number of thousand dollars.

Q. How much did he ever pay you, either before his "prosperity" commenced, or during his late "prosperity," on account?

A. In the course of this last summer or spring, he paid me about $800 or $1,000.

Q. There was still a large balance due to you which he did not pay?

A. Yes.

Q. You might also have made a claim against him for supporting his family? *A.* I suppose so.

Q. Did he ever pay any thing for that? *A.* No, Sir.

Q. Do you know of your family, or any of them, receiving any thing from him? *A.* No.

Q. Any valuable presents? *A.* No.

Q. Do you know of their having received any presents from him?

A. No.

Q. Did he ever borrow any of your notes? *A.* Yes.

Q. Are they still outstanding? *A.* Yes, Sir.

Q. Was he ever spoken to and told that he ought to do something for you to get you out of this difficulty?

A I suppose there has been something said to him about it?

Mr. Noyes: Did you speak to him about it?

A. I think it likely that there had been some conversation between us.

Mr. Bryan: But you had some diffidence about it?

A. Yes. I supposed eventually that he would pay it.

Q. You thought he ought to do so. *A.* I thought he would.

Q. And you expected he would? *A.* Yes.

Q. Did you ever know of his riding in a carriage down to Wall Street?

A. I know that he was in the habit of riding home, but I do not know that he rode down.

Q. Mrs. Huntington was an invalid most of the time?

A. Yes, most of the the time.

Cross-examined by Mr. Noyes.

Q. How much have you been drawn in by Huntington in the way of loaned notes, advances of money, or any other way?

A. Between $6,000 and $7,000.

Q. Under what circumstances, generally?

A. I have accepted his drafts.

Q. Under what representations?

A. He represented that he would make it all right with me.

Q. Would provide for the drafts when they became due?

A. Yes, Sir.

Q. Has he not done so? *A.* Not in all instances.

Q. He borrowed your notes. To what amount?

A. To $4,200, or a little over.

Q. Under what circumstances were they obtained?

A. He said they would be all right when they came to maturity, I think. I have no recollection. That was as to the drafts.

Q. In regard to the notes?

A. I do not know that there was any thing said in regard to them.

Q. Was there any particular use that he was to make of them?

A. I suppose to make money.

Q. Have you advanced any money on credit to him within the last two years? *A.* I think not, Sir.

Q. Have you asked him for money that he owed you, during the last year?

A. I spoke to him about it. He has paid me some—I should think $600 or $800.

Q. Did he give you any excuse for not paying the rest.

A. No, Sir.

Q. Did you ask him for the whole? *A.* No, Sir.

Q. How frequently have you been here during the last year, before his arrest?

A. I do not know. Several times.

Q. Did you attend church with him? *A.* No.

Q. Did he have a pew in a church?

A. I understood he had a pew in three different churches. One was in Baptist church, one in a Congregationalist, and one, I think, in an Epispalian.

Q. What church did your daughter attend?

A. Recently, an Episcopalian church.

Q. You spoke of his cutting his boots and slippers. What did he do?

A He cut them to ease them, I suppose.

Q. How many times did you see him do it?

A. I have seen a number of pairs of boots cut in that way.

Q. You think the boots were cut to ease his feet?

A. I should infer that to be the case.

Q. When was it he got those dogs?

A. This last summer.

Q. One was a dog that weighed two pounds. Was that a ladies' lap-dog? *A.* I do not know.

Q. Was it not bought for Mrs. Huntington?

A. I do not know that it was.

Q. From whom did you learn that he gave $36 for it?

A. I learned it from him.

Q. The large dog. What was that?

A. A Newfoundland, by its looks. I wondered what he had such a large dog about the house for. He had a kennel in the yard.

Q. Is that an unusual thing?

A. Not with some gentlemen.

Q. He kept a large establishment of servants?

A. He, did, I should say eight or nine. I think there were five man-servants and four female. There was a cook, her assistant, a chambermaid, and Mrs. Huntington's maid.

Q. How long did that last? *A.* I cannot say.

Q. Considering the style in which he lived, did you think that was too many servants?

A. I should judge so.

Q. Did you tell him so?

A. No. I may have suggested some ideas about it to his wife.

Q. Did his living in this style strike you as remarkable?

A, I thought he was going pretty fast.

Q, Did you say any thing to him about it?

A. I did not. I may have said something to her about it.

Q. Had he a dinner service of silver, or merely a tea service?

A. He had a dinner service, I believe. He had vegetable and meat dishes of silver.

Q. Did you say any thing to him about that?

A. No, Sir, I never remonstrated with him about that.

Q. You did not think it out of keeping?

A. I had my own views of it.

Q. Where was his silver kept?

A. He had a large iron sale.

Q. Do you know of the jewelry which his wife had?

A. I know she had jewelry.

Q. Do you not know it was worth several thousand dollars?

A. I heard it was.

Q. Did you speak to either of them about it?

A. Not to my recollection.

Q. Were you ever there when he gave extravagant dinners?

A. I have been there at good dinners,—a sumptuous dinner I should term it. There were friends of his there—family friends, and other friends of his. There were generally courses, and very fine.

Q. Was it a French cook that he had? *A*. An English cook.

Q. What do you know personally about the stable?

A. I only know that he was having one prepared, or about finished.

Q. When did you hear about this project of ice to be sent to Panama?

A. I do not know. About the time that he was in the Panama operation.

Q. Did he talk with you about the ice? *A*. I think he did.

Q. Did he want you to engage in it? *A*. No, Sir.

Q. Do you not know that the transportation of ice to tropical countries is a profitable business?

A. It is when you can get the ice there.

Q. Do you not know that gentlemen have made fortunes in New-Hampshire, in that ice business solely? *A*. I do not know—I have heard so.

Q. When did he put your two sons in business at Wilmington?

A. I should judge in the spring.

Q. What amount of capital did he contribute?

A. I do not know. Something like between $2000 and $3000.

Q. How many sons have you? *A*. Eight, Sir.

Q. Have you sons with the initial names annexed to those bank-notes—"F." and "S. C. D?" *A*. I have, Sir.

Q. You know the handwriting of those sons of yours. Are those signatures their handwriting? *A*. I cannot say, Sir.

Q. What is your belief? *A*. I should think not.

Q. Whose are they?

A. I do not know. I understood as regards those notes, that he sent to my sons to have them give him leave, or power of attorney.

Q. Did you understand it from Huntington? *A*. I do not know whether directly from him or one of my sons.

Q. Did you have any conversation with him in relation to the signature of those notes?

William A. Turnure, Examined by Mr. Bryan.

Q. What is your business?

Q. I keep a livery stable at the corner of 4th Avenue and 25th street.

Q. Are you acquainted with Mr. Huntington?

A. I am, Sir, since last May.

Q. Has he left horses in your stable? *A.* He has.

Q. How many horses have you known him to own, within the past six months or a year?

A. I should judge from fifteen to twenty.

Q. Give the Court and Jury some description of those horses, and how he became possessed of them.

A. Some were coach horses, and some road or trotting horses—rapid horses. Some he paid a great deal of money for. He bought some outright, and some he swopped for.

Q. During how long a period was it that he owned that number of horses?

A. He stabled from 7th of May to 6th of September, and then removed his horses to a private stable he fitted up in 23d-street.

Q. Did he buy his horses judiciously?

A. I do not think he did. The first team of horses he bought, he went with the foreman of the stable, to the Bull's Head. He paid $400 for them, and gave a check for $500 to the foreman, telling him to keep the balance. Another instance he swopped for a pair with Marshall, and paid $1,200 or $1400 to boot. He saw one of the horses; the other he did not see, and when he came to the stable he was not a sound horse.

Q. What did he do about those horses that you have spoken of?

A. He tried them probably two or three times out on the road, brought them back, and told the foreman to sell them; he did not like them. They remained in the stable about ten days. He then took them to Rockaway, and, about a week after that, I heard the horses were good-for-nothing, from over driving.

Q. How did he use his horses?

A. I should say without any judgment whatever, from the way he smashed them up.

Q. In what condition would the horses be usually returned to the stable, when he had them?

A. In the summer as wet as they possibly could be—every appearance of being driven very hard.

Q. Did you ever buy any horses for him?

A. I did not. The foreman of the stable did.

Q. What was the most expensive span of horses you know of his purchasing?

A. The team that he bought from Mr. Marshall—$1,200 or $1,400 boot, and a horse he gave some $700 for.

Q. What was the style of his carriages during this time?

A. He had wagons, phætons, coupees, top wagons, and trotting wagons.

Q. High priced or low priced?

A. No. 1 articles I should think; silver plated mountings; some were lined with drab cloth, some with what we call silk lining.

Q. How many have yon known him to have during this time, of wagons and carriages?

A. Six, seven, or eight. He would often take away a wagon, and bring back another one.

Q. For what reason? *A.* I supposed they did not suit him.

Q. The ones he brought back, were they any better than the ones he had?

A. They were different in style,—I do not know that they were better.

Q. How many men did he have in his employment, whose duties were confined to those horses? *A.* He had three at our stable.

Q. Did he have any anywhere else?

A. He had a man with Mr. Burbank.

Q. When a gentleman keeps his horses at your stable, at livery, is it customary to do the grooming yourself?

A. It is generally. He kept his own grooms; he had one regular coachman, one groom, and one who acted as coachman and groom.

Q. Did you ever see Huntington handle any money round the stable?

A. I did. I have seen him hand Mr. Marshall a portion of the money when he swopped for the team of horses. One time he jumped out of his wagon, and gave the man who took the horses a roll of notes—$5's or 10's.

Q. How high a sum have you known him to give to the persons who attended there? *A.* I think in one instance $20.

A. Did you ever get any repairing done for him?

Q. We sent his wagons, when broken, to the carriage-makers. He paid the bills, I presume, himself.

Q. Were breakages frequent with him?

A. Yes, quite frequent, on his light wagons.

Q. Did you, at the time of his arrest, know of his having a span of horses in the hands of George S. Earl?

A. I understood he had a gray and sorrel. Mr. Huntington told me he had sold them to him.

Q. Do you know what he got for them? *A.* I do not.

Q. How many carriages had he at the time of his arrest?

A. I do not know. When he left my stable, on the 6th of September, he had five or six.

Edward Carey sworn, Examined by Mr. Brady.

Q. Were you in the employment of Mr. Huntington?

A. I was, as driver or coachman for Mrs. Huntington. I went there on the 7th of May, and did not leave until the horses were taken out of the stable.

Q. While you were with Mr. Huntington, how many horses did he own?

A. Some eighteen, Sir.

Q. How many did you ever know him to have at one time? *A.* Seven.

Q. How many carriages at one time? *A.* Four.

Q. What do you know of his use of money?

A. He appeared to be very liberal with it. He used to give me, as "perquisites," a good deal of money.

Q. Do you know of his giving any one else "perquisites?" *A.* No, Sir.

Q. How many servants did he have in his family at one time?

A. Seven at one time.

Q. Have you been there when there was any music in the house, at night? *A.* I have. It was a brass band.

Q. What was the occasion of it?

A. I do not know. There were none there but the family, that I know of. I never frequented the upper part of the house after dark.

Q. What month was this?

A. About July, I should say, Sir.

Q. You generally stayed about the stable?

A. I used to board with Mr. Huntington, but did not lodge there. I was in the house at my meals.

Q. Do you know about the new stable that Mr. Huntington had?

A. I knew that he got a stable in 23d Street.

Q. Did he have it at the time of his arrest?

A. He had it four days at that time.

Q. Did you know of any horses in the hands of Mr. Earl?

A. I did not.

Q. How long did it take to build that stable and fit it up?

A. I do not know. They were at it a few days before I found out he was going to have a stable.

Q. How many horses would it contain?

A. Four.

Q. What part of 23d Street was it?

A. Just east of Third Avenue.

Q. How many horses in it, at the time of his arrest? *A.* Three.

Q. How many were sold by the Assignee? *A.* Four.

Q. How many carriages sold by the Assignee?

A. A carriage and a wagon.

Q. Was there not another at the coach-makers, being repaired?

A. I know nothing about it, Sir.

By Mr. Noyes: How much wages did he give you?

A. $20 a month. I boarded in the family.

Q. What perquisites did you receive?

A. I received at one time as much as $30, when I was about leaving town, to go East with his family, to New London. We went by boat, and took the carriage and horses.

Q. How long did you stay there?

A. Three weeks, Sir.

Q. Did Mrs. Huntington go? *A.* Yes, Sir.

Q. Was it after you came back, you heard the music in the house one evening? *A.* Yes, I think so, Sir.

Q. Who were there at the time?

A. Miss Barry, Mrs. Huntington, and Mr. Huntington.

Q. That is all you know? *A.* Yes, Sir.

Q. Was it the brass band that was playing about Grammercy Park, and employed to play for an evening? *A.* Yes, Sir.

By Mr. Bryan: When Mr. Huntington gave you this $30, did Mrs. Huntington pay your expenses? *A.* Yes, Sir.

Wm. G. Foster sworn, Examined by Mr. Brady.

Q. What is your occupation?

A. I have been formerly in the lumber business.

Q. How long have you known the defendant? *A.* Since 1847.

Q. Did you have any business transactions?

A. Yes, of various kinds. The first transaction, I sold him lumber.

Q. Were you of the firm of Foster & Vanostrand?

A. Yes, for the last 14 years.

Q. Was a check forged in the name of that firm, at any time, and when?

A. I do not know of my own knowledge.

Q. Did you know any thing about that circumstance, and what?

A. I had notice that there was a check of mine in a banker's hands, unpaid, for $500—I think that was in 1852. I called on the broker (named Thwing) the next day, and he said Mr. Huntington had just taken up the check, and paid it.

Q. Who sent you the notice? *A.* I do not know, now.

Q. Was any such check of yours in existence?

A. I never made any such check.

Q. Did you see Huntington shortly after Mr. Thwing told you that?

A. Yes.

Q. Did you speak to him about this?

A. There was something spoken about it; I do not recollect what it was.

Q. Did you refer to having this interview with Mr. Thwing.

A. I do not think I did directly.

Q. Did you give him to understand it in any way?

A. I do not recollect positively enough to make any statement upon that.

Q. Was there any other instance of that kind in your relations with him? *A.* Not of forgery, Sir, that I know of.

Frederick W. Talkington sworn, examined by Mr. Bryan.

Q. You are a clerk in the store of Mr. Agate, in Broadway?

A. I am. It is a Gentlemen's Furnishing Store.

Q. Are you acquainted with Mr. Huntington?

A. Yes; he bought goods of me, shirts, cravats, handkerchiefs, &c.

Q. What quantities did he purchase?

A. Sometimes very little, sometimes very large.

Q. What quality? *A.* The best of every thing that we had.

Q. How many shirts did you sell him during the past year?

A. I think three dozen, since Sept. 1855—dress shirts, every day shirts and fine shirts.

Q. Do you recollect any occasion when his purchases were without regard to price?

A. He never asked the price of any thing. About Dec. 1854, he contracted a bill which he said he could not pay then. It was sent several times. He continued purchasing, as before, and paying for what he took, but some things he purchased and did not pay for were not sent home, and he was mad about it, and sent for his bills, which he paid. After that he bought again, and I used to send the goods home to him, when he paid for them.

Q. You sent the things before they were paid for?

A. Yes, he paid afterwards.

Q. Do you recollect any occasion about handkerchiefs?

A. He came in one day and said he left home without a handkerchief. I showed him some, and said he had better take the lot, and he said "Yes, send 'em up." I have sold him a bundle of cravats in the same way.

Edward E. Day sworn, examined by Mr. Bryan.

Q. How long have you known Huntington?

A. I think 26 years.

Q. Where did you first become acquainted with him?

Q. In Geneva. We were schoolboys together.

A. State some of his peculiarities while at school?

A. We used to sit in adjoining desks. When we were nine or ten years of age, I sat next to him. There were many things about him rather peculiar. When I first knew him he had a sore head or neck. He used to cry sometimes at his desk, and sometimes pull the hair out of his head until he got it partly bald. He used to say there was something in his head that hurt him, and by pulling his hair out it would stop. Once we were late at school, and Mr. Taylor, the teacher, required a written excuse. I had one, and he wrote one himself, and signed his father's name to it. Mr. Taylor called him up and asked him who wrote the excuse. He said his father did. Mr. Taylor ferruled him pretty hard, until he admitted he had written it himself. Then, said Mr. Taylor, why did you say that your father wrote that excuse? "Because he did," he replied, though before he admitted he wrote it himself. Another time he was required to write a composition. When presented, it proved to be copied from the English Reader, which we were in the habit of reading in school every day. "Where did you get that?" asked the master. "I wrote it myself," he replied. Mr. Taylor made him read it from the English Reader, and asked him why he said it was his own composition? He said he did not know it was there, and turning round to me at the desk, he said, "I *did* write it."

Q. Do you know of his borrowing any money at school?

A. He once borrowed sixpence of me, and agreed to pay me the next day five dollars for the loan of it. The next day he had not five dollars, but he had his hand full of ten cent pieces and coppers, which he gave me. Another time he wanted a cent to buy some candy, and said he would give a shilling the next day for it, and gave his handkerchief as security. The next day he did not bring the shilling, and he told me to keep the handkerchief. He said "it is forfeited." One time he came to school with his hat full of candies; the teacher asked him what he had in his hat. He said—nothing. He called him up, and taking out the candies, asked him why he said, nothing. He said there was nothing,—he did not know how they came there. There was a chair with gold leaf on the back. He scraped it off, and the next day he said he sold it to Dr. Carter for $3 50. If at any time he was in want of paper, he would tear a leaf right out of his book anywhere.

Q. Was there any thing noticeable in him, which distinguished him from other boys?

A. There was. He was noticed particularly by the whole school. Even his teacher once said he did not know it would do any good to punish him.

Cross-Examined by Mr. Noyes.

Q. Where do you live now? *A.* In Brooklyn.

Q. Did you communicate the facts you have testified to now to Mr. Huntington's counsel? *A.* Yes, a few days ago.

Q. Of your own motion, or were you applied to?

A. I was talking to a person about this who was a particular acquaintance of mine, and he requested me to go and see the counsel, and I said I would.

Q. Since your boyhood, have you been acquainted with Huntington?

A. Not much. I knew him during my apprenticeship. I have seen him once or twice in the city.

Q. Did he get much punishment?

A. He did for a time; but at length the teacher said he did not know that he would punish him any more.

Q. Was he an incorrigible bad boy?

A. No, he seemed thoughtless and reckless. He was a very clever, good-natured boy, and would do any thing he was asked.

Q. Did he get his lessons well?

A. Sometimes he would, and sometimes they could not do any thing with him.

Q. Was that obstinacy, or want of knowledge. *A.* I do not know.

Q. Was he a good penman?

A. He used to be writing and scribbling. He had at one time a piece of paper relating to a debating society. He had put down all of our names on it, and they looked a good deal like our handwriting.

Q. Was he not considered a very bad boy?

A. No; he was considered a shallow boy. He was not malicious.

Q. Did you ever consider him wicked?

A. I never heard it brought out. He seemed to be heedless and careless.

Q. Is it an unusual thing to find bad boys at school?

A. There were none of that stamp—none of that kind.

Wm. R. Huntley sworn, Examined by Mr. Brady.

Q. What is your business?

A. I have been in the Fancy Goods, No. 557 Broadway.

Q. Has Mr. Huntington bought goods of you during the last year?

A. Yes, Sir. He came into my place one evening, after 8 o'clock. He asked me for hair brushes. I showed him one and told him the price, $1. He took up two others of larger size, and said he would take those three. He took up some nail-brushes in the same manner. He saw a *papier mache* workbox. I told him the price was $20, and he said, I will take that. After buying some other things, he called for pen and ink, and gave me a check on the Park Bank, I think, for $51. I took the precaution to see if the check was good—he bought in such a wild manner. It was, and I sent him the articles.

Q. When was this? *A.* I think in the latter part of May.

Q. Had you ever seen him before?

A. No, nor since, to my knowledge.

By Mr. Noyes.

Q. Were the articles he bought very good?

A Yes, with the exception of the common hair brushes, that he said were for servants.

Q. Those were suitable for that purpose? *A.* Yes.

[Defendant's counsel put in evidence and read, without objection, the Assignment of Charles B. Huntington, to Wm. H. Halsey, dated October

10th, 1856, preferring Harbeck and Belden, and excluding all other creditors. It divides the whole property equally between them, without reference to its amount, or the amounts due to them respectively. For this paper, see *post.*]

Robert W. Bowyer re-called, Examined by Mr. Bryan.

Q. Where are those books that you obtained at the time you arrested Huntington?

A. In the possession of the District Attorney. [Books produced; and for description of same, see *post.*]

Q. Were those the books you took from Huntington's office? *A.* Yes.

Q. Look at *that.*

A. Yes, Sir. This book I brought from the office. It is for blank drafts.

Q. And are *these* (four small books) the balance of them—blank notes and drafts—that you found in his office?

A. Yes, Sir; these were all taken from the office by myself.

Q. How many have you? *A.* Five books, and some separate sheets.

Q. Those separate sheets are from one of the books?

A. I think they do not correspond. They are a different blank. That large book is a check-book.

Q. These are all the books and paper that you gou got out of his office at the time, except what young Barry testified to?

A. I think there are a couple of letters I found, in reference to a man named Clarke, in Newark.

Q. That is all? *A.* Yes.

Examined by the District Attorney.

Q. What day of the month was it that you got those books?

A. The check-book and cash-book I got on the day I first arrested him, on the 9th day of October, in the afternoon.

Q. When did you first see Huntington on that day?

A. Somewhere in the afternoon—at the office of Charles Belden, No. 60 Wall street.

Q. Did you go out of the office with him?

A. When he accompanied me to the Tombs.

Q. When you went with him to the Tombs, were you and he alone?

A. No, Sir; there was Mr. Dodge, Mr. Stokes, and Mr. Fitch.

Q. Did you walk with Mr. Huntington? *A.* I did, Sir.

Q. Did you have any conversation with him?

Mr. Brady objected to the District Attorney going into new matter, on any cross-examination of this witness at this stage of the case.

Objection overruled.

Q. I want you to state what passed between you and Mr. Huntington, on your way from Mr. Belden's office to the Tombs.

A. Mr. Huntington told me he had received those notes from Mr. Fitch. Afterwards, when we arrived at the Tombs, I obtained the two notes from him; I submitted them to Mr. Fitch, in Huntington's presence, and asked him if he had given those notes to Mr. Huntington. He denied that he ever did give them, or knew any thing about them.

Q. Did Huntington say any thing further?

A. I then asked Mr. Huntington what evidence he could produce to show that he ever had received those notes from Mr. Fitch. I asked him in what way did he pay for them. I understood from him that he had given $20,000 for those and some other notes. Mr. Huntington told him that he paid $12,000, I think, in cash, and the balance—$8,000—in checks. I asked him where it was that he had paid this money. He said at his office. I asked him who was present. He said his own boy. I told me that as Fitch denied having given him those notes, and the forged paper was found in his possession, he would require some other testimony. He had previously said that he would made an affidavit himself that he had received this from Fitch. I told him that, as the paper was found in his possession, it would be necessary to have other evidence to corroborate this statement.

Q. When did he first produce those notes?

A. After we arrived at the Tombs.

Q. Had you asked for them before? *A.* I had several times.

Q. What was his answer?

A. He declined giving them. He wanted to deliver them to the District Attorney. I was going to bring him up before the District Attorney.

Q. When he got to the Magistrate's office, he gave them up?

A. Yes, Sir, his counsel was there; I insisted on getting them. His counsel advised him to give them up, and he did so.

Did he converse with you at that time, in regard to the forgeries?

A. That was, I think, the amount of the conversation between us in regard to them.

Q. This was on the 9th, the day of his arrest? *A.* Yes.

Mr. Brady gave notice to the counsel for the prosecution, that if they had any further questions to put to Mr. Bowyer, on any subject, they must examine him now; for in going into new matter, they had made him their witness, and he (Mr. Brady) would consider him as recalled by them. If they should again propose to recall the witness, he would stand on his right to object.

Examination of Bowyer continued, by Mr. Brady.

Q. Who was the first person that spoke to you about those forgeries?

A. Mr. Dodge and Mr. Stokes were together. One of those gentlemen. That was on the 9th, if I recollect.

Q. What was the first remark you made to Huntington, communicating to him that there was a charge against him? What was the beginning of your intercourse?

A. I think I let him know I was an officer as soon as I saw him, but did not immediately intimate that there was a charge against him.

Q. You went to Mr. Belden's office?

A. Yes, I had been in the office some time previous to Mr. Huntington's coming in.

Q. Had you conversed with Mr. Belden while there? *A.* Yes, I had.

Q. Had you seen Mr. Harbeck?

A. I do not think I had until after Mr. Huntington came in.

Q. Did Mr. Belden know what you were waiting for?

A. He knew what my business there was.

Q. Did he know that your business was to arrest Huntington?

A. I cannot say that he did.

Q. He knew you were an officer? *A.* I told him.

Q. He knew generally the nature of your duty?

A. Yes. When Mr. Huntington came in, I spoke to him in regard to those forged notes. I informed him who I was, and that I was there to get possession of those two forged notes that I understood had been shown to Mr. Dodge. I wanted them from Mr. Huntington.

Q. That was the first time you had ever spoken to him about this charge?

A. Yes. Mr. Belden was standing by his side; he asked him whether he should give up the notes. Belden said he had better hold on to them until he had seen counsel. Mr. Platt, counsel, was sent for.

Q. Between the time that Belden advised Huntington to hold on to the forged paper, and the coming in of Mr. Platt, did anything transpire between you and Mr. Belden and Mr. Huntington?

A. Yes; there was considerable talk. Mr. Huntington said that he had received those notes from Mr. Fitch; that he had seen Mr. Fitch on the street, and Mr. Fitch promised to give him other securities.

Q. What did Belden say to that?

A. If I may give my opinion, I am satisfied from the circumstances that took place there, that Mr. Belden thought Mr. Huntington was innocent, and wished the party to be found from whom the notes were had.

Q. The whole of Belden's demeanor was that of a man who believed Huntington to be innocent of forgery? *A.* Yes, Sir.

Q. Did Mr. Belden say any thing?

A. He sided with Mr. Huntington. I cannot recollect the particular words.

Q. When Mr. Platt came in, what then?

A I allowed him and Huntington to go aside to talk.

Q. Did Mr. Belden take any part in the conversation?

A. I think Mr. Platt and Huntington stood on one side. I was a slight distance apart, so as to keep him in view.

Q. After that, what then?

A. I think Mr. Harbeck came in. He spoke to Mr. Belden. I do not know what he said. Mr. Harbeck wanted to speak to Mr. Huntington, and I told him he must not leave my sight. Mr. Harbeck was taking Mr. Huntington aside, and they were at the folding doors, when I interposed, and said he must not leave my sight. Mr. Harbeck seemed a little huffed. He did not persist in it; and we all started together, and came up to the police office.

Q. Was there no more conversation?

A. Yes, there was, but I cannot state what it was. It was all in reference to this forged paper, and that Mr. Huntington had received it from Mr. Fitch. The whole sum of the conversation was that.

Q. It is your impression that Belden and Harbeck conversed together, when you did not hear what they said?

A. I have no doubt they did; but I cannot say they did.

Q. When going down to the police office, did you walk along side of Huntington?

A. We rode up to the park in an omnibus. There were five, six or seven of us. We got out opposite Murray street, and then walked along the park.

Q. Did not any one talk to Huntington while in the omnibus?

A. I do not think there was any thing said in the omnibus. We got out at Murray street and walked up to the Chief's office.

A. Did he and those people have any conversation from the time you left Wall street until you reached the Chief's office?

A. There was plenty of opportunity to do so; but I cannot recollect.

Q. Did Mr. Belden tell you that he had that paper?

A. He said he had those very notes that were spoken of, and he took out an envelope with some other notes which he had received, and which I then thought were good.

Q. Belden did not say that he received them from a stranger?

A. No, Sir.

Q. He knew perfectly well he had received them from Mr. Huntington?

A. Yes, Sir. He said at first to me that it was "from a respectable source," that he had received them from a good man, that he was a correct man.

Q. Did he tell you afterwards that the man was out of town from whom he had received them? *A.* No, Sir.

Q. When you addressed Mr. Huntington and told him that you wanted that forged paper, did he manifest any surprise?

A. No, Sir, he was perfectly cool.

Q. Did he manifest the least excitement?

A. He was perfectly cool. There was only a single mark about him, and that was a little red spot on his forehead, where little drops of perspiration came out. He was perfectly cool as a man could be.

Q. That was the first interview you had with him? *A.* Yes, Sir.

Charles E. Scofield sworn, Examined by Mr. Bryan.

Q. What is your business?

A. I am treasurer of the Green Bay, Wisconsin and Lake Shore Railroad.

Q. And Cashier of Bishop & Co., No. 52 Wall street? *A.* Yes.

Q. What is their business? *A.* Railroad Contractors.

Q. How long have you known Huntington?

A. I think I saw him in Mr. Belden's office in 1854, the fall or winter. I never knew him by name until the fall of 1855.

Q. What Belden do you speak of?

A. C. & G. Belden, then; now Charles Belden & Co.

Q. Where is G. Belden? *A.* Dead.

Q. Was Mr. Belden in the habit of doing business with Bishop & Co., at the time you first saw Huntington there? *A.* No, Sir.

Q. After that?

A. Very little business was ever done between them. At one time there was some trifling business.

Q. Had Mr. Bishop been introduced to Mr. Belden by any formal introduction?

A. I cannot say. I know that he made Mr. Belden's office his place of business before he had an office of his own.

When was that?

During the fall of 1854, and part of the winter of 1854-5.

Q. What was Mr. Belden's business?

A. I suppose he was a loaner of money.

Q. When you use that expression, has it not a particular signification in Wall street?

A. I cannot tell what Mr. Belden's business was particularly. He might be called a note broker, or loaner of money.

Q. Did Bishop & Co., have any dealings with Mr. Huntington during the past year? *A.* Yes, Sir.

Q. What was the character of those dealings?

A. Bishop & Co. loaned Mr. Huntington money from time to time, and borrowed money through and from him from time to time—large sums of money. I think Bishop & Co. loaned him money first—sums of $2,000 and $3,000 at a time at first.

Q. Had Huntington, previous to that, left money on deposit with Bishop? *A.* Yes, Sir.

Q. When Mr. Huntington loaned Bishop & Co. money, what rates or compensation did they pay him?

A. Bishop & Co. borrowed money of him at from 7 per cent. per annum up to one-and-a-half per cent. per month. That was the highest.

Q. What amount of money, in the aggregate, do you think Bishop & Co. borrowed from Huntington, during the continuance of their dealings?

A. A very large amount. I cannot say how much from recollection.

Mr. Bryan: Well, get at it as near as you can. We do not consider a $100,000 or $200,000 of any consequence, here, one way or the other. (Laughter.)

Witness: I should think the aggregate might amount to half a million or so.

Q. When Bishop & Co. loaned him money, what was he in the habit of paying for it?

A. There never was any agreement for the payment of any particular sum, that I recollect. He very often would ask for $5,000 or $10,000 in a day, and would return it and pay at the rate of one per cent. a day, saying it was one half of what he had made out of the money.

The Court: Paid one per cent. a day? *A.* He often did.

Q. Without any particular agreement?

A. Yes, Sir. It would not be that account precisely, but in that neighborhood.

Mr. Bryan: His transactions were more or less of that character when he borrowed of Bishop & Co.? *A.* A great many were.

Q. And he was not bound to pay more than 7 per cent.? A. No, Sir.

Q. About this time were you in the habit of seeing Mr. Huntington handling the checks of Beldens to a large amount?

A. I used to see their checks very often in his hands.

Q. Was Mr. Huntington in the habit of borrowing money for Bishop & Co. upon stock of the Lake Shore Railroad?

Q. He made a good many loans for Bishop & Co. on stock of the Lake Shore Road.

Q. When Bishop & Co. have placed stock in his hands for that purpose, have they offered him their stock notes at the same time, to use in connection with the loans? *A.* Yes, Sir.

Q. What has he said? Did he take them?

A. Sometimes he did, and sometimes he did not, saying he did not wish them.

Q. Look at those two stock notes (handing papers), and say whose name is signed to those stock notes? *A.* Bishop & Co.'s name is to them.

Q. In whose handwriting are those notes filled up?

A. C. B. Huntington's.

Q. From whom were these stock notes received by Bishop & Co.?

A. The first I saw of them was in the hands of Mr. Halsey. I think they were received from Harbeck & Co. Mr. Halsey is the clerk of Harbeck.

Q. Is the signature to these notes genuine? *A.* No, Sir.

Q. Whose handwriting do you recognize in that signature?

A. I should call it C. B. Huntington's.

Q. Is there any resemblance to the signature of Bishop & Co.?

A. I cannot see any. I was surprised that any one would ask the question. I would not suppose that any one would think there was the least similarity.

Q. What are the collaterals for those notes, specified?

A. Four hundred shares of stock, behind each note, of the Green Bay, Wisconsin and Lake Shore Railroad.

Q. What was that worth a share? *A.* From $65 to $70.

Q. Then you consider the 400 shares which are behind each note, sufficient collateral? *A.* I do.

Q. If that amount of stock was behind each of these notes, would those notes have been sufficiently secured? *A.* Yes.

Q. To whose order are those notes payable?

A. To the order of C. B. Huntington. One is endorsed "pay Harbeck & Co. or order.—Charles B. Huntington;" payable two days after date. The other has no endorsement.

Q. If Huntington had called upon Bishop & Co., for their stock notes, to be used in connection with a loan for $20.000, for that amount of stock, would they have let him have them?

A. I think they might let him have them, if he had asked for them.

Q. If the loans were made for his own account or for their account?

A. If made for their account, of course they would. If on his account, I think they would. They did once or twice, for large amounts.

[The two stock notes here referred to, were partly written and partly printed, and were as follows, the written portions being in italics].

$20,000—— New York, *Sept.*, 27, 1856.

On the 29th, *Sept.*, without grace, *we* promise to pay to *C. B. Huntington* or order, *Twenty Thousand* dollars, for value received, with interest from the date hereof, at the rate of 7 per cent per annum, having deposited with *him* collateral security 400 *shares of the stock of the Green Bay Milwaukee & Chicago Railroad Co.*, with authority to sell the same at the Brokers' Board, or at public or private sale, or otherwise, at option, on the non-performance of this promise without notice and with authority to use, transfer, or hypothecate the same at option, being required, on payment or tender at maturity, of the amount loaned with interest, to return an equal quantity of said Stock, and not the specific Stock deposited.

BISHOP & CO.

$20,000. New York, *Oct*, 1st., 1856.

On demand, days after date, without grace, *we* promise to pay to *C. B. Huntington* or order, *Twenty Thousand* dollars, for value received, with interest from the date hereof, at the rate of 7 per cent per annum, having deposited with *him* collateral security, 400 *shares Wisconsin Lake Shore Stock*, with authority to sell the same at the Brokers' Board, or at public or private sale or otherwise, at option, on the non-performance of this promise without notice and with authority to use, transfer, or hypothecate the same at option, being required, on payment or tender at maturity, of the amount loaned with interest, to return an equal quantity of said Stock, and not the Specific Stock deposited.

BISHOP & CO.

Q. Where was Bishop's residence?

A. Bridgeport, Connecticut. He is now boarding in this city, with his family. He is in town every day, but to-day he had occasion to go to Connecticut, and will return on Friday.

Q. Did Mr. Belden or Mr. Harbeck, or any one connected with that office, call on Bishop & Co., and ask whether any particular paper or security, which purported to emanate from their office, was genuine, which they stated they had received from Huntington?

A. I do not know. I know that Mr Harbeck, or his clerk, or some one in that office, brought in a piece of paper one day, about a year ago, to inquire if it was all right. I do not know who had the paper. I suppose Mr. Huntington had it.

A. Did you see Mr. Huntington on the day of his first arrest?

Q. I saw him in the morning before 11 o'clock, before his arrest.

A. That was the day after he had been questioned by Mr. Dodge and Mr Belden respecting those forgeries?

A. It was the 9th of October I refer to.

Q. How did he appear in his office—any change in him?

A. No, Sir, apparently none.

Q. Was he transacting business, as usual?

A. Yes, Sir, he came into our office, and asked me to loan him a check for $9,000 I think.

Q. He wanted to borrow from Bishop & Co. $9,000? *A.* Yes, Sir.

Q. Did you let him have it? *A.* I did.

Q. On any security? *A.* No, Sir.

Q. Do you know of his giving Belden & Co., a check for $9,000 on that or the preceding day?

A. No, I do not. I never knew what he did with that.

Q. Were you present at the time of his arrest?

A, Not on the first day. I saw him on that night. I went to his house myself early in the evening, about 7 o'clock. He then said he had to go to Mr. Belden's, to see his counsel and Mr. Belden and Mr. Harbeck. I think too, he said, he would be home at 11 o'clock, when he would see me. I went at 11 o'clock, Mr. A. F. Conklin was with me. We waited until half past 11, or a quarter to 12 before Mr. Huntington returned.

Q. What was the object of your visit, and the result?

A. I went to ascertain what this noise was about—whether these were forgeries or not, and to see if I could get secured for Bishop & Co. Mr. Bishop wasa way. I had telegraphed to him about 4 o'clock, that there

was trouble, and I wanted him to come on. I asked Mr. Huntington whether they were forgeries or not, and he said he could not tell, he was afraid they were. I asked him what would be the result of it. He said that if they turned out to be forgeries he was afraid he would be ruined, or used up, or some such expression,—for he had a very large amount of them. I asked him what he intended to do to his creditors, and he said he should serve them all alike. I said that was perfectly satisfactory to me, if he did so, and I insisted that he ought not to do any thing else.

Q. He promised, did he?

A. He did—he promised that if he did any thing, he would make a general assignment for the benefit of all.

Q. Did he do so?

A. No, Sir. The next day (Oct. 10th), he made an assignment to Wm. H. Halsey solely for the benefit of the Harbecks and Beldens: and a few days afterwards, under the advice of counsel, he treated that assignment as void, and made an assignment to Bishop for the benefit of all his creditors *pro rata*, and there has been litigation about it ever since.

[It was here agreed that the assignment to Halsey and the assignment to Bishop should be understood as in evidence, and for these papers see *post*.]

Mr Bryan: How did he appear that night?

A. He appeared as he always did—perfectly cool and collected.

Q. The next day he was arrested again?

A. Yes. I saw him about half-past 5 o'clock the morning after his first arrest, in his house, in bed. There was very little said. I asked him whether he was going to the office. He said he was. I asked him if he was going on with his business, and he said he was.

Q. And he came down and went on with his business that morning?

A. He came down. I saw him in the office. I do not know whether he did any business that day. I should suppose he did not, except to see Harbeck & Belden, and prepare the assignment, and so on.

Cross-examined by Mr. Noyes.

Q. What was Concklin there for?

A. I suppose about the same business that I was.

Q. What was that?

A. Trying to secure what was owed us, in case those were forgeries, and he was compelled to fail.

Q. Did Concklin have a considerable amount of the forged paper?

A. I do not know. Mr. Concklin stood by, and the conversation was principally between me and Mr. Huntington.

Q. Did you not learn in that conversation that Concklin had a quantity of this paper which Huntington was afraid was forged?

A. No, Sir; I did not, nor suspect that he had any.

Q. Was he there about some claim against Huntington? *A.* Yes.

Q. What amount of paper had Bishop & Co., that Huntington was afraid was forged?

A. I think about $37,000. We had not loaned that amount, but that was the amount of paper we had. At that time I did not suspect more than one or two pieces of Phelps, Dodge & Co.'s paper, for $5,000 or $10,000.

Q. Whose was the rest?

A. Sackett, Belcher & Co., Waldo, Barry & Co. I do not recollect all. The paper is in the hands of the police. $36,000 or $37,000 in all.

Q. Have you since ascertained that it is all a forgery?

A. I have not. Part of it has been sworn to, and I suppose it is.

Q. Is not that Huntington's writing? (Handing up a confession of judgment to Bishop & Co.)

A. That is his signature appended to that judgment.

Q. Has not all the forged paper been arranged by that confession of judgment, since Huntington went to prison, between him and Bishop?

A. Not on the basis that it was a forgery, but that he owed us that amount of money.

Mr. Noyes put in evidence, and read a confession of judgment for $27,000, from Charles B. Huntington to Bishop & Stuart.

[For this paper see *post.*]

Mr. Noyes: Now, were those notes mentioned here, received from Huntington, by Bishop & Co., upon such transactions as you have described here, where he paid sums equivalent to about one per cent. per day?

A. No, Sir, upon no such transactions.

Q. There were independent transactions from those in which he gave those large sums?

A. There has not been any transaction of that kind for a long time. The most money that Huntington received from us, and paid in that way, was in the early part of the spring and summer.

Q. In relation to the transactions for which judgment is confessed, state about them.

A. I think on the 15th or 16th of September he came into our office, and said he wanted to take some of our paper, and try to sell it for us. He said he had some notes, which were first class notes, that he would leave in the place of them, sufficient to secure the amount. He spoke to me about it, and I spoke to Mr. Bishop. He said he did not wish to do it. Mr. Huntington insisted upon it, and said he wanted to make the exchange for a short time. After looking over the paper, we concluded to let him have the exchange, and we let him have the drafts of Bishop & Co. for those, to be delivered back whenever requested, or the right to him to sell our paper and return the proceeds.

Q. So you let him have genuine drafts of Bishop & Co., and received those forged notes as securities?—*A.* Yes.

Q. You had no suspicion that they were forgeries?—*A.* No, Sir.

Q. Messrs. Therasson & Bryan, counsel for the prisoner, are counsel for Bishop & Co.?

A. Mr. Bryan is counsel for Bishop & Co.

Q. When did you discover that those two notes, of Sept. 27, for $20,000 each, were forgeries?—*A.* On the morning of 10th Oct. I think.

Q. How did you make that discovery?

A. I think Mr. Halsey brought them into our office.

Q. Mr. Halsey, after the arrest of Huntington, brought those notes in?

A. Yes. It appeared he had shown them to Mr. Bishop, and he asked me what that meant. I do not know what Mr. Holsey said. He seemed to be anxious to find out whether they were forgeries, or not. It was quite evident to me on looking at them. I think this was shortly after 10 o'clock in the morning.

Q. Where were the 400 shares of stock, named as collateral?

A. Mr. Halsey only claimed $15,000, and he had 300 shares as collateral. I told him the notes were not ours, but we took the stock and paid him the $15,000 he claimed.

Q. You adopted the transaction, and paid $15,000?

A. Yes.

Q. Had you authorized Huntington to make any loan for Bishop & Co. on that 300 shares, of any amount?

A. I do not know that we had on that stock.

Q. It was not, then, originally, a transaction for Bishop & Co. at all, or one which they had authorized?—*A.* Not that I am aware of.

Q. You simply adopted the transaction, and took back the stock?

A. Yes.

Q. Had he got the stock originally from you?

A. I cannot tell. I presume he had.

Q. In reference to the other note, did you adopt that transaction?

A. All we told Harbeck & Co. was that we would pay $15,000 and take the note and stock. Nothing was asked for the other note. I do not understand there was anything due on it.

Q. Those notes were not authorized by Bishop & Co.? *A.* No.

Q. Why did you take up the stock of 300 shares?

A. Because it was worth more than $15,000. Any person that wishes to let me have 300 shares more for that, I will be glad to let him have $15,000.

Q. Have you become acquainted, through any communications with Huntington, of any other forgeries by him, besides those notes of $37,000 mentioned in the confession of judgment and those two stock notes?

A. I do not know any thing from Mr. Huntington whatever; nothing but what has been in the newspapers, and what I have heard from others.

Q. To what extent had your house employed him to borrow money on Lake Shore Stock? The gross amount?

A. Some hundreds of thousands of dollars, in sums of from $20,000 to $40,000.

Q. Your house were contractors for the road? *A.* Yes, Sir.

Q. How were those loans effected by him? Who gave their note or check, in connection?

A. Ordinarily, Bishop and Co. would give their note with the stock.

Q. The stock was to be pledged as collateral, and the note and stock were intrusted to him to borrow the money? *A.* Yes, in that way.

Q. And for this you paid him seven per cent. per annum, or up to one and a half per cent. per month?

A. Yes; I do not think we ever paid him any more.

Q. Were there any considerable sums? *A.* Yes, Sir.

Q. When did he pay a dollar per cent. a day for borrowed money?

A. Many transactions in the early part of this year, from February to June—very little latterly.

Q. State what those transactions were?

A. Mr. Huntington would come into the office, and say to me that if he had some money he could make a great deal out of it.

Q. What would he offer to you as an inducement to let him have the money?

A. It was not always he spoke of it: when he did, he said he would give me one half of what he made.

Q. What amounts would you let him have from time to time?

A. From $3,000 to $20,000.

Q. How would you get along with the profits?

A. I knew nothing of the transactions, except that he would return the money next day, or day after, say he made so much, and profess to give me one half of what he made. Many times I objected to take so much, but he would insist on my taking half the profits.

Q. It was not, then, borrowing and lending money, strictly; but your transactions, where you paid him $7 per cent. and over, were borrowing and lending strictly?

A. If we wanted to get money from him, we would get it at seven per cent., sometimes, and sometimes one per cent. per month.

Q. And when he paid you one per cent. per day, it was one half of what he had made?

A. Yes, one half of what he said he had made.

Court adjourned to Thursday, December 25th, at 10 o'clock, A. M.*

Tuesday Dec. 25, 1856.

James C. Griffin sworn; examined by Mr. Bryan.

Q. How long have you known Huntington?

A. Since the spring of 1851.

Q. Did you have any dealings with him? *A.* I had.

Q. When did those dealings commence? *A.* About that time.

Q. What was the nature of them? *A.* Buying paper of him.

Q. It has been said that he forged your name. Is that so?

A. I found a check on the Butchers' and Drovers' Bank, *paid*, that I never drew.

Q. About what time?

A. I found it out about the middle of Sept. 1852.

Q. How long had you known Mr. Huntington before that?

A. About a year and a half perhaps.

Q. What were the amounts of these checks?

A. I think one was for $200 and the other for $300.

Q. Any others? *A.* No other forgeries on my name.

Q. Was that the Bank in which you kept your account? *A.* Yes, Sir.

Q. What was the general nature and amount of your dealings with the defendant before that?

A. I cannot state any where near the amount. I bought notes of him

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* The hour of adjournment (5 o'clock) having arrived, the Judge proposed to hold an evening session. Mr. Brady stated that he could not possibly attend. Some remarks were interchanged between the Judge, the District-Attorney, and Mr. Brady, relative to the number of days that the trial might yet occupy. The term of Judge Capron's office expires at midnight on Wednesday next, and unless the trial is finished prior to that, the present proceedings are a farce, as the case would fall through for want of a Judge, the Recorder or City Judge elect not being able to sit before the first Monday in January. Hence the anxiety of Judge Capron to urge on the trial, and to hold night sessions to expedite it. The Court will sit to-day (Christmas Day), a circumstance almost unparalleled in the history of the Court of Sessions.—*Daily Times of December* 25.

promiscuously, and kept no account of the amounts. I should think altogether, $30,000 or $40,000, perhaps $50,000.

Q. You bought paper and notes? *A.* I did.

Q. Did he hypothecate any notes with you?

A. I do not recollect his doing so.

Q. When you found out that these checks were forgeries, did you speak to Huntington about it?

A. Yes, the first time I saw him.

Q. Did you make any complaint about it? *A.* No.

Q. What did Huntington say about it when you spoke to him?

A. He did not make much reply. He admitted that he had done it.

Q. State all he said?

A. I do not know that I can state just what he did say. He merely confessed that he had done it, and said that he had only given it as collateral security, and never intended it to go to the Bank—that it had got there, and he wanted me to help him out of the matter.

Q. How help him out? *A.* To assume them, and not to expose him.

Q. Did you? *A.* I did so.

Q. Did you have any intercourse with him after that?

A. I did, what was necessary to close up my business with him.

Q. Did you see him frequently since?

A. I saw him for three or four months after those transactions, very often, perhaps every day.

Q. Did you sign his release? *A.* Yes.

Q. During the time you knew him, did you see any thing of his manner of doing business?

A. Not very much. I had a good deal of business with him, and was in his office frequently.

Q. From what you saw of his business, and manner of doing it, what in your opinion was his capacity for shrewdness, forethought, and caution as a business man?

A. To the time of the discovery of those forgeries I had not noticed any thing peculiar. I thought he was very easy, and rather careless.

Q. Who presented those checks to the bank?

A. I do not know.

Q. Do you know Mr. Cool?

A. Yes, Hiram M. Cool. He is a lime-dealer on West Street, and owns a transportation line between here and Glens Falls.

Q. Did you tell him about it? *A.* Yes, Sir.

Q. Who else?

A. I told Mr. Randel and a Mr. Smith Gardner.

Q. Did you tell the cashier of the Butchers and Drovers' Bank?

A. I never told him I knew who forged them. I told him they were forgeries.

Q. Where are those checks?

A. I gave them to Mr. Huntington, I think, in the summer of 1856.

Q. After you signed Mr. Huntington's release, did he pay you any thing?

A. He did, $300.

Q. Forged notes of Foster and Vanostrand have been spoken of. Do you know any thing of them?

A. I had two notes of theirs, which Mr Huntington said were forgeries. He told me during the month of October or September, 1852.

Q. For what purpose did you hold these?

A. I held them for money I had given him. He gave them to me for money he owed me.

Q. For what amount were they?

A. Between $400 and $500 each—somewhere from $900 to $1000, both taken together.

Q. Some forged paper of Augustus L. Brown has been spoken of. Had you any of that?

A. I had a check of his, received from Mr. Huntington. I think for $1000. I held two other checks at that time, and they were paid.

Q. Who paid them?

A. Mr. Huntington gave me the money.

Q. Under what circumstances did you receive the checks of Mr. Brown?

A. For money I had lent Huntington.

Q. When was this?

A. About September 25th. It all occurred within a few days.

Q. Are you acquainted with Charles Belden? *A.* Yes, Sir.

Q. How long have you known him? *A.* I think some 14 or 15 years.

Q. Since you have been acquainted with Mr. Huntington, have you known of his doing business with Belden?

A. I have not of my own knowledge.

Q. What is Mr Belden's business?

A. I believe he is a broker. He loans money and buys notes.

Q. Do you know the Harbecks? *A.* By sight.

Q. What is their business? *A.* I do not know.

Q. Have you had dealings with Mr. Belden?

A Yes. We were agents together in selling the Glens Falls marble, at one time.

Q Have you borrowed money of him?

A. I borrowed small sums of money from him for a year.

Q. When was it Mr. Huntington told you these were forgeries?

A. About the middle of September, 1852. I was going to his office but he came to mine first. I said there were two checks on the Butchers and Drovers' Bank that I had not drawn, and asked him if he knew any thing about it. I stated they had been paid by the bank.

A Juror: Were they good imitations?

A. No. They might have been picked out by any one almost, as forgeries.

Q. Was there a general resemblance?

A. In one of the capital letters, perhaps. In other respects they differed very distinctly.

Q. Did you speak to him about all those notes and checks being forged, in one conversation, or at different times?

A. At different times, within a few days of each other, however.

Another Juror: Your motive in keeping it secret was to save Mr. Huntington? *A.* Yes.

Mr. Bryan: *Q.* What was the first forgery you had a conversation about, with Huntington?

A. The checks on the Butchers and Drovers' Bank.

Q. What was the next forgery, that you had a conversation about?

A. I think it was about the forgery on Augustus L. Brown.

Q. How did you come to speak of that?

A. I think I mentioned before Mr. Brown in some way, that I held such a check, and Mr. Brown thought I did not. He did not say out and out in terms, that it was not his writing. I then went to Mr. Huntington about it, and he admitted it.

Q. Do you recollect any thing else that occurred at that time, between you and Mr. Huntington?

A. I think that was all at that time. Those checks were written a few days of each other.

Q. What is the next forgery he spoke to you about?

A. Foster & Vanostrand's. I mistrusted that those were not right; I held a good many notes from him, and I inquired if there were any more forgeries among them. I think he stated that Foster & Vanostrand's were the only ones.

Mr. Noyes: He admitted that each was a forgery, as you suggested it to him, from time to time? *A.* Yes.

A Juror: What amount did you lose by Mr. Huntington?

A. About $8000.

Mr. Bryan called William H. Harbeck, and he not answering,

Mr. Noyes said he was sick, and confined to his bed.

Wm. H. Halsey called, and sworn: Examined by Mr. Bryan.

Q. What is your business?

A. I am in the employment of Harbeck & Co., as clerk.

Q. Are you one of his book-keepers? *A.* No.

Q. How long have you been in his employment?

A. Several years.

Q. Where is their office? *A.* No. 60 Wall Street.

Q. Are you acquainted with Charles B. Huntington? *A.* Yes.

Q. Do you know of his having dealings with Harbeck & Co.?

A. Yes.

Q. When did those dealings commence?

A. As near as I can recollect, about the beginning of January last.

Q. Are you acquainted with Charles Belden?

A. Yes, his office is in the same building. Mr. Belden has the front portion of the floor, and Harbeck & Co., the rear portion of the same floor.

Q. Would a person visiting Harbeck's office go through Belden's office, or along a corridor, and through a door at the rear?

A. Both ways.

Q. How long have they had that back entrance, so that it would not be always necessary to go through Belden's office?

A. Since about the 5th or 6th of May last.

Q. How was it before that?

A. The entrance was through Mr. Belden's.

Q. Do you know the peculiar reason which induced Mr. Harbeck to have that back entrance?

A. Yes. The offices, as we had them before, were very disagreeable on account of the heat; and, therefore, we arranged to have the whole floor through, so as to have them comfortable.

Q. You never heard any other reason?

A. No. It was done for the facility of all parties, to have the offices comfortable.

Q. Did the fitting up of that back entrance have any reference to Charles B. Huntington's business with Mr. Harbeck?

A. Not that I know of.

Q. Are you very intimate with Mr. Harbeck's affairs? *A.* Yes.

Q. His confidential clerk?

A. I know most of the business—in fact, I think all the business of the concern.

Q. Give the jury some general idea of the extent of the dealings of Harbeck & Co. with Charles B. Huntington?

A. I cannot give you the extent.

Q. How much do you think?

A. I cannot give an opinion, for the reason that the accounts were not kept in a way that it could be arrived at. The transactions were large, but of what extent I cannot say.

Q. How frequent were they?

A. From the month of May to the 8th or 9th of October, daily.

Q. From the time of fitting up the back office, they were daily?

A. About that time.

Q. When did his dealings begin? *A.* About the first of January.

Q. They were not so frequent before May. *A.* No, Sir.

Q. Did Harbeck & Co. keep any books in which they were in the habit of entering transactions with their customers?

A. Yes, Sir; they were in the habit of entering transactions with parties with whom they had dealings.

Q. How comes it that the books do not show the dealings with Huntington?

A. For the reason that for a large portion of the time the dealings with Mr. Huntington were counted in as cash.

Q. Is that the only reason they do not show?

A. That is the only reason.

Q. Do you mean to say that if Harbeck & Co. had failed in business, that their books would not have shown the amount of Mr. Huntington's indebtedness to them?

A. I mean to say that at one time the books would not have shown the indebtedness—there were other things that would.

Q. What other things would show it?

A. Envelopes that contained the securities for the loans.

Q. Why were not those transactions entered in some book?

A. They have been entered, after a certain time, into a book called the loan ledger.

Q. They were entered as a general thing.

A. After a certain time all loans were entered.

Q. After what time? *A.* After the beginning of July of this year.

Q. What was the occasion of their changing their course of doing business and of keeping their accounts?

A. In order to have a more correct account.

Q. Was not that change made by reason of the advice given after a consultation with their lawyer? *A.* Yes, Sir, in part.

Q. Who was the lawyer? *A.* Mr. James W. Gerard.

Q. What do you know of that consultation?

A. I think I was present at one consultation between Mr. Gerard and Mr. Harbeck.

Q. What was said between Mr. Harbeck, Mr. Gerard and yourself?

A. I think Mr. Harbeck asked Mr. Gerard whether the business in which he was engaged would make him a partner with Huntington. Mr. Gerard said he thought not; but it might be a question.

Q. What did Mr. Harbeck state to Mr. Gerard which called forth that opinion?

A. Mr. Harbeck stated to him that he was in the habit of loaning money to a party engaged in buying paper, who would buy paper on certain rates, re-sell it, pay back the loan, and allow Mr. Harbeck what he thought proper on the profits of the transaction.

Q. Was the name of that party given? *A.* I cannot now recollect.

Q. You knew who that party was? *A.* Yes.

Q. Who was it? *A.* Mr. Huntington.

Q. Did Mr. Gerard ask any thing concerning the reliability of that party?

A. As to that I cannot say. The conversation was some time ago. I do not recollect the minor points about it.

Q. Was any of his advice or opinion coupled with an inquiry concerning the character of the party you referred to?

A. As to that I cannot say now. Mr. Harbeck had more than one interview with Mr. Gerard.

Q. This thing was pending for some time?

A. This interview, when I was present, was in our office.

Q. Did Mr. Gerard look over the books? *A.* No, Sir.

Q. Did he look at any books?

A. I think not. I am positive he did not at *that* time.

Q. Were there ever any entries made in any book, or any form made upon any paper, previous to this consultation, relating to the dealings between Huntington and Harbeck & Co., out of which this question of partnership arose?

A. No, Sir; because I think at that time all the matters were counted in as cash. The collaterals of each loan would be kept in an envelope.

Q. What is the meaning of the word "special" on the back of one of those envelopes?

A. In some instances Mr. Huntington would bring in paper, with another party's check, and say he wanted to have a loan especially for them. That would be marked "*special.*"

Q. Describe one of those transactions where Mr. Huntington would come in to get money on collateral.

A. I could not describe them. They were transactions occurring frequently.

Q. Fix your mind on one.

A. I cannot. It is impossible for me to do it now.

Q. Were you ever present when Mr. Huntington came for such a loan?

A. I am pretty sure I have been.

Q. To as large an amount as $20,000?

A. I think I have been present on such occasions.

Q. When he has brought in a check, with some collaterals pinned to it,—can you fix your mind on a transaction of that kind?

A. I cannot now on any positive date or time.

Q. He has done it, and has left such a check and collaterals pinned to it, and has received the amount of money specified in that check from Harbeck & Co? *A.* Yes, Sir.

Q. Has that check been dated ahead? *A.* I think it may have been.

Q. One, two, or three days, or some short time?

A. Yes, Sir—that is, the check of the party for whom he said he wanted the money.

Q. Have you ever been present when any such loan was paid by Huntington? *A.* I think I have.

Q. How was it repaid?

A. Mr. Huntington would bring in a check for the principal and interest on it, at 7 per cent. per annum. He may have brought in a check for just the amount of the loan.

Q. Would he ever pay anything further, in reference to any particular loan which he paid in that way? *A.* I think he may have.

Q. Who to? *A.* To Mr. Harbeck or Mr. Stoutenberg.

Q. Do you not know that Harbeck & Co. had some standard rates for the use of money?

A. I know that Harbeck & Co. had an agreement with Mr. Huntington.

Q. When was that agreement entered into?

A. I think some time in the latter part of June. It was an agreement distinctly stated by Mr. Harbeck to Stoutenberg and myself, and by Mr. Huntington too; that Harbeck & Co., were not entitled to claim from him more than 7 per cent per annum., on any loans. Not only once has Mr. Huntington stated so, but several times.

Q. And that was a distinct, unqualified agreement, that he was not to pay more than 7 per cent?

A. Yes, that was stated to me. (Sensation.)

Q. That was the result of a conference between Harbeck & Huntington?

A. I do not know of any particular conference between Mr. Harbeck and Mr. Huntington.

Q. Was not that done to prevent the possibility of any such transactions being claimed as usurious?

A. That you must ask Mr. Harbeck, or Mr. Huntington.

Q. Did you not so understand it? *A.* I do not know.

Mr. Brady: If a man does not himself know what he knows, no one else can find it out.

Witness: I consider that remark uncalled for.

Mr. Brady: Well, we withdraw it. (Laughter.)

Q. After that agreement was entered into, was the business conducted on that basis, until the consultation with Mr. Gerard?

A. I think the consultation with Mr. Gerard was about that time. I think the special agreement or understanding I spoke of was made a day or two after the conference with Mr. Gerard, when I was present.

Q. Oh, then, that agreement was entered into in consequence of the advice of Mr. Gerard? *A.* I presume it may have been.

Q. Are there any books or papers now in existence to show the balance on an account stated between Harbeck & Co. and the defendant?

A. There is a book that will show the several loans made. I presume it will.

Q. Where is it? *A.* It is in the safe in the District Attorney's Office.

Q. The book you now refer to is a book which I have examined once, in the office of Harbeck & Co., in a proceeding in the civil suits.

A. Yes, Sir, in the civil suits; you and Mr. J. J. Scofield saw it.

Q. Now, do you wish this jury to understand that after the express agreement, that the interest should be seven per cent. from Huntington, you do not know of any instance in which Harbeck & Co. received from Huntington, or were to receive any benefit from or for a loan, further than that legal interest of 7 per cent?

A. I know that all the loans made after that were made with that understanding. After that period the loans made by Harbeck & Co. to Huntington were on the agreement that they could not claim more than seven per cent.

Question repeated.

A. I wish the jury to understand that after that time they were not to receive, nor he to pay, more than seven per cent.

The Court: The counsel asks you whether they *did* receive it, directly or indirectly.

A. No. Harbeck & Co. did not, after that time, receive more than seven per cent.

Q. Did any one on their account?

A. Nothing more than I have stated, were they to receive. (Laughter.)

A Juror: Did they receive any more from Mr. Huntington or other persons? *A.* No, Sir.

Q. Did they receive any gift, directly or indirectly?

A. Harbeck & Co. did not. What Mr. Wm. H. Harbeck may have done I do not know.

Mr. Bryan: Do you not know that one of the members of that firm has received something of that kind?

A. I know that one of the members of that firm has received *presents* from Mr. Huntington. (Laughter.)

Q. What kind of "presents"?

A. Among other things he gave him a horse.

Q. Which Harbeck? *A.* Wm. H. Harbeck.

Q. Did he receive any money? *A.* He may have made him presents of money.

Q. Do you not know that Harbeck & Co. considered, while they were doing business with Huntington, that they were making very large amounts of money?—they or either of them?

A. I cannot tell what they thought they were to receive.

Q. What did you suppose?

A. I supposed they were to receive seven per cent. on loans.

Q. I ask if it was not commonly understood by them, and well known in the office, that they were making large amounts of money by Mr. Huntington, or through, or by means of operations with him, at any time?

A. I should say they would think they would make money by him.

Q. Large amounts? *A.* I do not know what amount.

Q. Did Harbeck & Co. keep a profit and loss account?

A. Yes, Sir, in the course of their business.

Q. Where is the book that you kept under the advice of Mr. Gerard?

A. That (pointing to book) was it.

Q. What is the date of the first entry?

A. July 5th, 1856—Charles B. Huntington in account with Harbeck & Co.—$13,000 cash Dr. On credit side, $13,000 with interest for two days, $5.

Q. Up to what time does that account run? *A.* To October 8th, 1856.

Q. The day before he was arrested? *A.* Yes.

Q. What is that transaction?

A. October 8, cash $8,000, and under same date, cash $10,000.

Q. What is the aggregate, about, from July 5th to October 8th, of loans to Huntington?

A. I should say, by a hurried glance, over a million.

Mr. Noyes: Look over the credits, in the same connection, and give the aggregate, about? *A.* Credits about $900,000.

Q. Leaving a balance of over $100,000? *A.* Yes, Sir.

Mr. Bryan: Do you mean to say that is the balance which Harbeck & Co. claim? *A.* Yes (looking over the book rapidly.)

Q. Do you not know that they claim $350,000? *A.* I do not.

Q. Do you mean to say that all the transactions they had with Huntington after July 5, were entered in that book?

A. All with Harbeck & Co.

Q. With Wm. H. Harbeck as well?

A. He may have had transactions with him outside of that.

Q. Where did Wm. H. Harbeck keep the account of individual transactions? *A.* I do not know.

Q. Did he keep any separate book? *A.* No, Sir.

Mr. Bryan: Now, Sir, here is a question we have taken the trouble to write out; I am going to read it to you, and then hand it to you, and ask you to study and comprehend it if you can: Then we want you to answer it categorically, by a simple "Yes" or "No"—

Mr. Noyes: I submit to the Court that this is improper, for this preamble———

Mr. Brady: Never mind; let it be understood that we *withdraw* the preamble [laughter].

Mr. Bryan then read the question, and handed it to the witness. It is as follows:

Q. Do you wish this jury to receive as your testimony, that neither Harbeck & Co., nor either of the firm, nor any person for them, or for their house, in any way derived from their loans or advances to Huntington, after June 30th, 1856, any benefit, profit, present, advance, or gain, greater than interest at the rate of 7 per cent. per annum?

A. This question says June 30th. The book commences July 5. That leaves a time between them which I cannot state about.

Q. Well, Sir, call that July 5th then, instead of June 30th.

A. The question put is, "Harbeck & Co., or either of the firm, or any person for their house." The transactions with Harbeck & Co. of loans, when paid after that time, were generally paid by a check for the principal, with the amount of interest added. The transactions between Mr. Huntington and either of the firm individually were mostly done by themselves, and did not appear in the books of the concern. The amount of the principal and interest added would be paid to the firm, after the date of the loan. Matters with each member of the firm were private business, which I would not understand.

Q. That is a categorical answer, is it? *Did* you not know about them?

A. I may say I have known Mr. Huntington has made presents to Mr. Harbeck.

Q. Any certain amounts?

A. That I cannot say. It was done privately.

A Juror: Was there security for the loans to Harbeck & Co.?

A. Yes, Sir.

Q. How do you know those were presents?

A. Perhaps Mr. Huntington would send his young man with a note to Mr. Harbeck. I might see it open and see money in it.

Another Juror (Mr. Dayton): How did you suppose that was a present?

A. I might suppose so, or that it was some of their own private concerns.

Q. What made you think they were presents?

A. Merely my impression at the time.

Q. Is it not a strange thing for business men to give presents in that way?

A. I was aware that Huntington and Harbeck had private operations together.

Q. That is no reason for giving presents to one another. Was not that a payment instead of a present? *A.* That I do not know.

Q. Why do you call them *presents?*

A. I should think they were presents. I could not say of my own knowledge.

Q. Why think them presents?

A. I might think them presents because I knew he gave him a horse. What for I do not know. Operations with the *concern* would be all that I would know of those loans. Mr. Harbeck's *private* business I cannot tell about, of course.

Q. Why did you derive any conclusion that they were presents?

A. My impression is that Mr. Harbeck stated he had presents from Mr. Huntington. That may have helped me in my conclusions.

Mr. Bryan: Do you know a man of the name of Mahler?

A. Yes. He was employed at Mr. Belden's. He was his clerk or bookkeeper, I believe.

Q. When did you see him last?

A. I do not think I have seen him in three or four weeks.

Q. You have seen him since the arrest? *A.* Yes, Sir.

Q. Have you seen him since you were subpœnaed, either for the purpose of attending this trial, or in a civil suit, relating to Mr. Huntington's assignment?

A. I think I have seen him since the suit was commenced relative to the assignment.

Q. Were you not subpœnaed more than a month ago in that suit?

A. I should think somewhere about three or four weeks ago.

Q. Now, where is Mahler? *A.* I do not know.

Q. Do you not know he has been sent away?

A. No, Sir, I do not know he has gone away. All I know is that I have not seen him at the office.

Q. Have you heard where he is gone? *A.* No, Sir.

Q. What is his first name?

A. I think F. E. or F. H., or something like that.

Q. How long had he been in the employment of Mr. Belden?

A. Somewhere since May or June last.

Q. In what capacity?

A. He has kept his books, I know. What else he did I do not know.

Q. You do not know where he is now? *A.* No, Sir.

Q. And have not heard? *A.* No.

Q. Do you know *Thomas*, Mr. Huntington's boy? *A.* Yes.

Q. What is his name? *A.* I think his name is Thomas Tracy.

Q. Was he in Huntington's employment at the time of Huntington's arrest? *A.* I think he was.

Q. Whose employment has he been in since that?

A. For some two or three weeks we have given him something to do. Since that, he had obtained a situation, I believe. I think in some foundry in 10th street.

Q. Did you ever know of Harbeck & Co. lending Mr. Huntington money on Thomas's check—on that boy's check?

A. No, Sir.

Q. Did you hear of a circumstance of that kind?

A. I do not recollect ever seeing a check of that name in Huntington's papers. I speak from recollection only. It might have been.

Q. Did you know the firm of Leonard & Hoffman?

A. I know there are those parties—lawyers.

Q. Have they been in Harbeck's office?

A. Mr. Hoffman may. I think he came to see me about a matter of Mr. Huntington's.

Q. Did Harbeck & Co. ever hold a check of Leonard & Hoffman, signed Hoffman & Leonard?

A. They had a check signed Hoffman & Leonard.

Q. Was there not another check of $25,000?

A. Not that I recollect.

Q. Did you not see a check of that amount in Mr. Belden's hands?

A. I may, somewhere about that amount, in Mr. Belden's.

Q. Were Hoffman & Leonard wealthy?

A. I do not know any thing about their business. I understood they were Huntington's lawyers.

Q. Were you present when Mr. Bowyer came to the office, the first time, on the 9th of October?

A. I was not present when Mr. Bowyer came there.

Q. Were you present when Mr. Platt was sent for?

A. Yes, Sir, I just came there then.

Q. Mr. Platt is a partner of Mr. Gerard's *A.* Yes.

Q. One of the lawyers of Harbeck & Co? *A.* Yes.

Q. And when Mr. Huntington had got into this difficulty, Mr. Platt was sent for?

A. I think some one sent for Mr. Platt, and he came there.

Q. Did he draw up any paper that day?

A. Not that I saw while I was in the office.

Q. Did you go with Mr. Bowyer to the police office? *A.* No.

Q. When did you see Huntington next after his arrest?

A. I saw him that evening at Mr. Belden's house, in Grammercy Park.

Q. What time did he come there? *A.* I think about 7 o'clock.

Q. What time was he released on bail?

A. About 4½ o'clock. I understood Mr. Harbeck that he had made an arrangement to meet him at Belden's house that evening.

Q. Who was present?

A. As Mr. Harbeck andI got near the door, Mr. Huntington was going up on the stoop. We went in together—Mr. Huntington, Mr. Harbeck and myself. We went into the parlor, and we were there, I think, three quarters of an hour before Mr. Belden came in.

Q. Mr. Platt was sent for?

A. He was sent for after we had been there some time.

Q. What other man was there besides yourself and Harbeck and Belden, who could give us a *reliable* account of what happened?

Mr. Noyes objected to the intimation thrown out by this question.

Mr. Brady: Well, we *withdraw* it, then.

Mr. Bryan. What other persons were present, before Mr. Platt arrived, setting aside Belden and Harbeck?

A. No one except Mr. Belden's servant man, who came in and out of the room.

Q. Do you know James A. Lindsay, formerly clerk to Mr. Huntington?

A. No, Sir.

Q. Do you know of Harbeck & Co., or Harbeck, having a check, or stock note, or any kind of security, signed James A. Lindsay, that they received from Huntington?

A. I cannot state now, because I have no recollection of such a thing.

Q. When Harbeck gave checks on receiving a loan, were those checks presented on the day of their dates, by Harbeck & Co., at the Bank?

A. I think in some instances checks of his have been presented, and in some they have not.

Q. Where there was a loan for three days, the check dated on the third day, what became of the check when it matured?

A. Sometimes his check would be used, and sometimes another one was given for it.

Q. You usually sent him word?

A. He usually attended to that himself. He would bring in a certified check, or a check of his own, which he would say we could use.

Q. When Huntington would make a loan, with notes as collaterals, have Harbeck & Co. been in the habit of examining those notes, to see when they fell due?

A Sometimes we would look at the dates at which they would mature —sometimes we would merely look at the names of the parties.

Q. Did they keep a bill-book, to show when those notes matured?

A. They kept a memorandum book at one time, to show the dates, names, and amount, and when due. Just a mere rough memorandum book of these notes.

Q. Mr. Huntington made an assignment to you? *A.* Yes.

Q. For the benefit of the Harbecks & Belden. On the making of that assignment, did you take possession of his books and papers at his office?

A. The assignment was made to me on the 10th of Oct., and on the 11th, I believe, I took possession of the books and papers. They were partly taken possession of by Mr. Bowyer.

Q. Who first?—you or Mr. Bowyer?

A. I went on Saturday, the 11th, and took possession of his office myself; I think, on the next day Mr. Bowyer was in the office.

Q. You now have the books here which you took?

A. I have. A tin box of his which contained some loose papers; that box of papers I have not got here.

Q. You never showed that to me when I called upon you; and made an examination in the civil suits? *A.* No, Sir.

Q. Why? *A.* Because I did not think of it at the time.

Q. Did you find a bundle marked "H. H. Barry?"

A. I found such a bundle in Mr. Huntington's office, in the drawer of one of his desks.

Q. When you went to the office to take possession, who was in charge?

A. My impression is that I found the boy Thomas there.

Q. What did you do with Thomas? send him away?

A. No, I think I left him there.

Q. Who had the keys?

A. The office door was unlocked, and the key in the door.

Q. Did you know Mr. Barker? *A.* Yes, Sir; Daniel Barker.

Q. Was he in the employment of Huntington at the time of his arrest?

A. Yes, Sir, as a sort of clerk and assistant, attending to whatever business might be required.

Q. Do you know how Barker came to go to Huntington's?

A. I do not recollect the time. I think in May 1856. He being out of employment and wanting something to do, I think Mr. W. H. Harbeck recommended him to Huntington.

Q. And Huntington took him? *A.* Yes, Sir.

Q. Is he any relation to Mr. Harbeck? *A.* A brother-in-law.

Q. In whose employment had he been before that?

A. Attending to his own business, of a grocer. He kept a store in South Street.

Q. Had he been assisting Harbeck & Co. or Belden? *A.* No.

Q. How old was he? *A.* I think in the neighborhood of fifty years.

Q. Where is he now?

A. He resides in Williamsburgh. I think I saw him last on Monday or Tuesday last.

Q. After the assignment was made, you took possession of Huntington's house? *A.* Yes.

Q. Who did you put in possession? *A.* Mr. Barker.

Q. How long did he remain in possession?

A. From 11th of October until the day the sale took place.

Q. Those are the books that you took from Mr. Huntington's office?

A. Yes, those which I first brought in from the District Attorney's office.

Cross-examined by Mr. Noyes:

Q. Look at that erased signature, and see whether that is Huntington's?

A. Yes, Sir; I should think it is.

[Agreement for the purchase of land in Westchester County:—For this paper, see *post.*]

Mr. Bryan: Allow me to ask a few more questions.

Q. Is *that* one of the books you found?

[A private memoranda book, mutilated and torn, with sundry unintelligible entries in pencil.] *A.* Yes.

Q. Was there not another besides that like this? [showing a small book.] *A.* I think there w

Q. What has become of it? *A.* It may be in the tin box.

Q. Did you ever examine this other one? *A.* I think not, Sir.

Mr. Bryan: I want you to bring that tin box and book here. You should have brought them. You were subpœnaed *duces tecum*, and ought to have brought every thing relating to Huntington's affairs.

Q. Mr. Noyes: [resuming] When did you first exhibit the books of Huntington to his counsel?

A. I cannot now recollect showing those books to the counsel. I may have done so; but if so it has escaped my memory.

Q. When did you exhibit to him the books of Mr. Harbeck?

A. Some four or five weeks since, in Mr. Harbeck's office.

Q. Who went with Mr. Bryan and examined the books?

A. Mr. J. J. Scofield.

Q. Is he a lawyer?

A. I understand so. He is a brother of Charles E. Scofield, who is with Bishop & Co.

Q. How long an examination did they make of them?

A. I think they were looking over them some half-hour.

Q. Was every facility furnished them in regard to examining the books? *A.* Yes.

Q. Was Mr. Harbeck there? *A.* Yes, Mr. Wm. H. Harbeck.

Q. That examination of the books was in reference to a civil suit, was it not? *A.* Yes.

Q. And after an order had been obtained for examining them?

A. My impression is, that I told Mr. Bryan to come there and he could see the books, and he came.

Q. State the first transaction that you ever knew Huntington to have with Harbeck & Co., and when it was.

A. Somewhere near the 1st of January of this year, a loan of $1,000 or $1,500, on stock of the Lake Shore Railroad.

Q. Do you know whether they had known him, or had any transactions with him before?

A. Never had any transaction with him before that.

Q. How was he introduced to your office?

A. From seeing him do business with Mr. Belden.

Q. On what was that loan made besides the stock?

A. I think he gave the usual stock note.

Q. For how long a time was that loan made?

A. Some three or five days.

Q. Does that transaction appear on the book? *A.* No, Sir.

Q. How long after that was the next transaction made with him?

A. Some four or five days, something of a similar kind.

Q. Was ever any loan made to him except on some security or collateral?

A. I think never, but on one occasion, when I lent him $1,000 on his check to be used next morning.

Q. That you did without consulting Mr. Harbeck?

A. Yes. Next day the check was redeemed.

Q. On all the other transactions, what were the securities he usually left for loans?

A. Either stock of the Lake Shore Railroad, or notes of different parties.

Q. Do you remember what parties they were?

A. A number of names: Phelps, Dodge & Co.; Claflin, Mellen & Co.; Hope, Graydon & Co.; Bliss, Briggs & Douglas; Ward, Babcock & Riggs; Thos. N. Dale & Co., &c., &c.

Q. Those were notes apparently of good first-class houses in the city, were they not? *A.* Yes.

Q. State how the loans were made on that paper,—the earliest transaction you remember of that kind?

A. The earliest transaction I remember of that kind is Mr. Huntington's coming into the office somewhere in May. I do not recollect the name of the note he brought in, I think it was Butterfield, Brothers & Co. He stated he wanted to make a loan on the note, as he could buy it at one and a quarter or one and a half per cent. a month, and could sell it in the course of a day or two at a considerably less rate. He wanted Mr. Harbeck to make the loan, in order that he could buy the paper and make the transaction.

Q. Did he hold out any inducement to Mr. Harbeck to make that loan?

A. Yes, that he would make something handsome out of it; that he would sell it in a day or two at a low rate, 8 or 9 per cent perhaps. That I think was the first transaction. Previous to that we had always loaned him on railroad stock.

Q. Do you remember whether you have ever seen *that* note before?

A. I think I have; either that or a similar one I found in Mr. Huntington's box—the tin box. It is a note of Butterfield Brothers.

Q. Do you know whether that was ever in the hands of Harbeck?

A. I cannot say. I found it in the tin box. I handed it to Mr Bowyer.

Q. This [reading note], is "Dec. 5th, we promise to pay $4,750, signed and endorsed Butterfield Brothers." Was the note in the first transaction, of Butterfield Brothers, such a note as this? *A.* The same name.

Q. Was it endorsed by any one? *A.* That I cannot say.

Q. How long did this first transaction remain?

A. Only two or three days. Mr. Huntington brought the proceeds and got the note.

Q. What did he say when he got the note?

A. I cannot say, except that he said he had sold it and got the money.

Q. State the general character of other transactions on paper such as you have mentioned.

A. That was the nature of the transactions until about the time this bookcommences, on the 5th July.

Q. The loans, then, were made on mercantile paper, which he bought, or stock? *A.* Yes.

Q. What became of those notes? Were they sent to the maker to be paid, or delivered to Huntington? *A.* Delivered to him.

Q. The collaterals that he pledged, were they given back to him?

A. Yes, Sir.

Q. Was there ever any loan made on his individual security, except the one you made for $1,000.

A. No, except it might be $100 or so, in the afternoon, if we had the money in the drawer.

Q. Were any loans made to him without security after that book commenced? *A.* I think none at all Sir.

Q. When was that first conversation you mentioned in the direct examination, when Mr. Gerard was present, about the course of business between those parties? *A.* About the latter part of June.

Q. State what was mentioned to Mr. Gerard as the matter about which his advice was asked?

A. Mr. Harbeck stated to Mr. Gerard that he was in the habit of loaning to a party on paper which the party said he could buy and then re-sell, by which he could make a profit.

Q. What about the profit? *A.* That he would divide with him.

Q. He had been loaning on paper, which the party was to sell again, and divide the profits? *A.* Yes.

Q. What was the question asked Mr. Gerad?

A. Mr. Harbeck said he was afraid that in some way it would make a partnership. Mr. Gerard said he thought not, but the question might be made, and he had better have a stock note, stating the loan made. or certain securities, at 7 per cent per annum.

Q. A stock note, stating the collaterals, and power to sell them, if not paid? *A.* Yes.

Q. After that a book was opened in July, stating the transactions?

A. Yes.

Q. State whether in the transactions where Huntington sold the notes, it was, or not regarded by Harbeck as being a profitable transaction to them? *A.* Yes.

Q. Why?

A. They would loan their money to Mr. Huntington, which he was responsible for, and the profits which he would make, he would divide with them.

Q. He would come and pay the principal, and take up the collaterals?

A. He would bring in the proceeds of the notes.

Q. And pay over a portion of what he said he had made in the transaction?

A. He would say, "I bought them at such a rate and sold them at such a rate, and I divide the profits."

Q. Down to the time that the arrest took place, was there ever a loan to Huntington on his mere individual security?

A. No, except the $1,000 I mentioned.

Q. What was the amount of paper held by Harbeck & Co. at the time of the arrest, which was alleged to be forged?

A. I think the amount of paper held was over $300,000.

Q. The paper alleged to be forged, that they had received as genuine paper, and made loans on, amounted to more than $300,000. *A.* Yes.

Q. Was any of that paper ever received from him under the notion that it was fictitious or forged? *A.* Never, Sir.

Q. They were all *bona fide* transactions of loaning on the credit of that paper? *A.* Yes, Sir.

Q. What amount of that paper, alleged to be forged, did Belden hold at the time of Huntington's arrest? *A.* I do not know.

Q. Besides the transactions of Harbeck & Co., who held over $300,000 of this forged paper, did the individual members of the concern hold other amounts? *A.* That I do not know.

Q. Why was the boy, Thomas Tracy, kept?

A. My impression is that Mr. Bowyer suggested the idea of keeping him, or giving him some employment, as he might be wanted.

Q. So you took him into the office? *A.* Yes.

Q. How many book-keepers had Mr. Belden?

A. Mr. Mahler and Mr. Fisher.

Q. Do you know how those forgeries were first detected?

A. Only from what I have heard.

A. Mr. Platt you say, was sent for on the day of Mr. Huntington's arrest? *A.* Yes.

Q. Was any explanation asked of Mr. Huntington, as to where he got this paper? *A.* Not in my hearing.

Q. Do you remember him to say any thing about it?

A. Not in the office.

Q. Did you at Mr. Belden's house? *A.* Yes.

Q. State the conversation there, the night after the arrest?

A. Mr. Harbeck asked Mr. Huntington if he had any objection to my taking the other paper he held, and going to the parties and seeing if it was genuine. He said it would be no use. Mr. Harbeck asked why. He said it all came from the same source; then Mr. Harbeck said, "Do you mean to say that all this paper came from Fitch?" Huntington said "Yes." Shortly after that, Mr. Belden came in, and Harbeck said to Belden, "This paper, he says, all came from the same source. It must be all bad." Mr. Belden asked Mr. Huntington if it was so, and he said "Yes." Mr. Harbeck asked him in what way he did it with Fitch; he said Mr. Fitch agreed to sell the paper at certain rates, and afterwards take it back at certain rates. Huntington said he was very sorry, that he would work for them all his life-time, and so on; and the matter ended in shedding tears. After some other conversation, we left the parlor, and went into the dining room, to tea. Mr. Gerard was sent for; he was not at home, but Mr. Platt came. There was some general conversation. Mr. Huntington said he wished to do all he could for them. After some time I left with Harbeck, and we left Mr. Huntington in company with Belden.

Q. Did Huntington say any thing about these being fictitious transactions, known to Harbeck? *A.* No, Sir.

Q. He did not pretend any thing of that sort? *A.* No.

Q. Did he say any thing to them about their knowing that they were not real notes? *A.* No, Sir.

Q. Was it the next day after this, that they gave him up?

A. The next morning, when I came into the office, about 10 o'clock, I found Mr. Platt in the room, with Mr. Huntington.

Q. Was it the next day that Mr. Harbeck and Mr. Belden surrendered him? *A.* Yes, Sir, on the 10th October.

Q. Was there any thing said about proceeding against Fitch, in the presence of Huntington? *A.* Yes, Sir.

Q. What was said about that?

A. I do not recollect. Some remark was made about proceeding against Fitch; taking some steps the next day in regard to Fitch. It was suggested that Fitch had better be watched that night, to see he did not leave.

Q. Was any thing said about watching Huntington?

A. I think not, Sir.

Q. Look at *that* [handing him the stock note of Bishop & Co., the one *endorsed*] and say whether Harbeck & Co. loaned money on that, and whether it purports to be a note of Bishop & Co.

A. Yes, Sir; I think the amount of the note ($21,000) was lent—that is the one endorsed.

Q. Did they loan that, supposing it to be a genuine note?

A. Yes, Sir.

Q. When was it discovered to be a forgery?

A. The day or morning of his second arrest.

Further examined by Mr. Brady.

Q. Where was that arrangement made to meet at Belden's house, that night?

A. I understood it was made at the time of Mr. Belden and Mr. Harbeck being with Huntington, after they bailed him.

Q. What was your object in going there?

A. Mr. Harbeck thought I had better go up. I went in order to do any thing that might be required of me, in any way.

Q. What did you expect to be called on to do?

A. I could not state what my expectations were.

Q. Had you any definite object, known to yourself?

A. I may have had, but I cannot now recollect.

Q. You do not recollect that you had any?

A. I think I had a motive in going, but I cannot now state.

Q. It was not idle curiosity? *A.* No, Sir.

Q. It was not any thing connected with your own interest? *A.* No.

Q. Where did you reside then?

A. In Twenty-sixth Street, where I now reside.

Q. How long were you at Belden's?

A. From one hour to one and a-half.

Q. Did you leave Huntington there?

A. Yes. With Charles Belden.

Q. When Harbeck and you left, did you shake hands?

A. I do not recollect shaking hands. We bid him good night.

Q. Was any thing communicated to Huntington then, as about to be done on the following day. Did Harbeck or you give him to understand what would happen to him on the following day?

A. No, I do not recollect.

Q. Was there any business proposed to be done the next day?

A. I think not, Sir?

Q. Who began the conversation that night at Belden's?

A. Mr. Harbeck.

Q. How did it open?

A. I think Mr. Harbeck asked him as near as I recollect. The first question was, whether he had any objection to my going with the other paper to the parties, to see if it was genuine. He may have asked him, previous to that, how he felt.

Q. How long did this conversation that you have stated, last?

A. I think that Mr. Harbeck and Mr. Huntington were twenty-five minutes there before Mr. Belden came in; after that it was fifteen minutes be-
[illegible] into the dining room to take tea.
[illegible] took tea was it stated that all this paper was forged?

A. Not that it was forged, but that it had all come from the same source.

Q. Had any thing been assumed?

A. The conclusion I came to was that it was all bad.

Q. Was not all the conversation on the assumption that it was forged paper?

A. After Mr. Huntington made the remark, that it was no use, Mr. Harbeck made the remark, "then it is all bad," or something of that kind.

Q. At the tea table was any thing said about there being forgeries?

A. The conversation then was as to what it was best to do with regard to Fitch. It was concluded that we had better send for Mr. Gerard or Mr. Platt. Mr. Platt came.

Q. Who determined to do any thing about Fitch?

A. I think there was not any settled determination, but to leave it till morning to see what was best to be done.

Q. What was to be determined in the morning?

A. I do not know. Mr. Huntington was to be at the office in the morning.

Q. Was the object of his being there to determine to do any thing about Fitch?

A. Yes, Sir, that was the object of it.

Q. Do you know Fitch? *A.* No, Sir.

Q. Did Mr. Belden know Fitch? *A.* I do not know.

Q. Did Harbeck? *A.* I think not.

Q. In the morning, Huntington did come to the office? *A.* Yes.

Q. Who did you find with him?

A. Mr. Platt, Mr. Harbeck and Mr. Belden came in after I came into the room.

Q. Was there any thing then done in regard to Mr. Fitch?

A. No. Sir. The assignment was nearly all drawn and ready for signing when I came into the office.

Q. Was Mr. Platt writing?

A. I think Mr. Stoughtenberg copied off Mr. Platt's rough copy.

Q. Was there any other paper, in whole or in part?

A. I believe not.

Q. Was any thing said about Fitch at that time.

A. I do not recollect.

Q. So that although the purpose assigned was to meet to see what should be done with Fitch, Fitch was not mentioned at all?

A. I do not know what may have been said before I came in. Nothing was said while I was there.

Q. Did either Belden or Harbeck say, or was any thing said in Belden's parlor, on that evening, about the terms or conditions of the assignment?

A. No, Sir.

Q. Was any thing said to indicate that Belden had invited Huntington to his house to have a confidential conversation?

A. Nothing said, Sir.

Q. Then Huntington had no reason to suppose that any thing he said there might not be uttered by any body, without any violation of confidence, —just as if it had been spoken in the street?

A. I do not think he would speak publicly as he spoke there.

Q. Was there any obligation on any one to be silent, in relation to what passed? *A.* No, Sir.

By the Court: What did he state about his business with Mr. Fitch?

A. He stated that Mr. Fitch would sell the paper to him at certain rates, with the understanding that he (Fitch), would take it back again at different rates in the course of a few days.

Q. When these parties all got together at the house of Belden, who spoke first between those parties, about those two notes on which he was arrested being forgeries? Who introduced the subject of the forgeries?

A. It was brought out by Mr. Harbeck's question about any objection to my going and asking whether the other paper was genuine. Then he said he did not think it would be any use. Harbeck asked why? He said that it all came from the same source.

Q. Where did you get the idea that Fitch had any thing to do with the paper, before that night?

A. I heard from Harbeck that he stated he got the paper from Fitch.

Q. Had you heard any conversation between Harbeck and the defendant, prior to that time?

A. Just before Mr. Harbeck, Mr. Belden and Mr. Huntington left the office together, on the 9th, I heard Mr. Bowyer make the remark: "You see what a situation it places him in, as Fitch denies knowing any thing about it."

Q. Is Mr. Fitch in this city?

A. I do not know, I understood he was a stock-broker in Wall street.

Q. You mentioned the amount of loans by this house to Huntington after 5th July. State about what was the amount of the transaction up to that time?

A. From January to May but a small amount, about $15,000 or $20,000. During May, I should think, perhaps, about $250,000, and during the month of June, about double that amount. Say on a rough calculation about $800,000 or $900,000 from the first of January to July.

Mr. Brady: That would be from January to the arrest of Huntington in all, about two million of dollars?

A. Somewhere about that.

Q. Lent by Harbeck & Co. to Huntington? *A.* Yes.

Q. About what do you believe from your knowledge of the business, to be the amount of profit (call it "presents," or interest, or any thing you like), which Harbeck & Co., or either of them, made out of those loans?

A. I cannot make a guess.

Q. Cannot make a guess between $10,000, or $130,000?

A. I think over $10,000.

Q. How much in any way, directly or indirectly?

A. From present impressions, I should not think over $30,000.

A Juror: What was the amount of loss in the aggregate?

A. The amount of indebtedness is about—over $100,000.

Q. How much money is Harbeck out by these transactions, whatever they did?

A. Whatever the difference is between that and what they made.

Mr. Brady: Not to have a misunderstanding, I will state that I understand him to testify that he cannot state, from any knowledge of his own, what amount is now due on an account fairly stated as between Harbeck & Co. and Huntington, and there are no books or papers in existence which show it.

Witness: I think I stated that that book shows it.

Mr. Brady: That book begins, July 5th 1856, the transactions of of Harbeck & Co. How as to individual transactions?

A. They do not appear in the books of the house.

Q. So that you cannot give the Jury any date on which they can state an account which will embrace all the transactions between Harbeck & Co. and Huntington, and between him and the Harbecks individually?

A. No, Sir.

A Juror: Did either of the Harbecks make any presents to Huntington?

A. No, Sir.

Mr. Noyes: I understand you to say the amount which Harbeck & Co. received from Mr. Huntington, for the use of the money and for presents, does not exceed $30,000? *A.* I think not.

Q. What is the whole amount due to Harbeck *& Company* for unpaid loans? *A.* I think $108,000, or $110,000.

Q. Was it the habit of Huntington, whenever a transaction closed, and the loan was paid up, to take up the collaterals? *A.* Yes, invariably.

Q. And all those transactions in which a balance remains due, were on unclosed matters, the collaterals remaining in the hands of Harbeck & Co.?

A. Yes, Sir, until they went to the police-office.

Q. So they held those forged papers only as security? *A.* That is all.

A Juror: Was there any inquiry made as to whether the paper was good?

A. Mr. Harbeck made inquiry, and the general representations were that the houses were good.

Mr. Noyes: Is there any relationship between Harbeck and Belden?

A. No, Sir.

John J. Levy, sworn—examined by Mr. Brady.

Q. What is your occupation?

A. I am a manufacturer of playing cards.

Q. Do you know Belden and Co.?

A. I know Mr. Belden by sight.

Q. Charles Belden? *A.* I believe it is Charles.

Q. Do you know the members of the firm of Harbeck and Co?

A. Merely by reputation—not personally.

Q. You formerly had a partner named Heustis? *A.* Yes.

Q. At that time did you ever have any transactions with Harbeck and Belden?

A. The firm never had. Mr. Heustis had some transactions in which the firm's name was involved.

The Court: With Harbeck and Belden?

A. Yes, one or the other. It was a sort of see-saw concern between the two.

Q. And the firm became involved, how?

A. Mr. Heustis obtained an advance on various checks from Belden.

Mr. Noyes objected to the testimony of the witness as irrelevant. He objected to any evidence of transactions with Belden.

The Court sustained the objection.

Mr. Brady excepted, and withdrew the witness.

Otto Füllgraff, M. D. sworn—examined by Mr. Bryan.

Q. What is your business?

A. I am a homœopathic practitioner.

Q. Was Huntington a patient of yours? *A.* Yes, Sir.

Q. For how long a time?

A. Himself and family since 1854, I think it was in the spring.

Q. Did he board in the same house with you in Irving place?

A. Yes, for eight or nine months.

Q. And you have been his family physician since that time?

A. Yes.

Q. Did you visit him while he resided at 22d Street? *A.* Yes.

Q. And 39th Street? *A.* I have.

Q. Were you called upon to visit him? *A.* Yes, Sir.

Q. Professionally? *A.* Yes, Sir.

Q. How often?

A. It is difficult to tell unless I refer to my books. I have attended him two, three, or four times during a day or night. I thought it very frequently superfluous.

Q. Was there any thing noticeable in the description of his symptoms?

A. At what period.

Q. During the last year?

A. I think while he was residing in 39th Street, he was suffering from the ill effects of large doses of quinine, which he had been taking to suppress, or rather with the intention to cure the Chagres fever. Then I was called upon, and found him in a very dilapidated condition. His spleen and liver were very much affected; and, at times, he was delirious during the paroxysm.

Q. How long was he sick at that time?

A. I think three or four weeks. As he would persist in going out against my wishes, he was subject to frequent attacks. He would not adhere to what I said. He would not follow up the diet. He would smoke ten or fifteen cigars a day; perhaps more. He would go to his office, whereas he ought to have remained in the house.

Q. He was a very heavy smoker?

A. He was, excessively so.

Q. Do you think that that had an injurious effect upon his system?

A. Decidedly so—very bad.

Q. What was the effect?

A. It would, in the first place, derange his digestive organs. It would counteract, to a certain degree, the medical treatment. It must, to a certain extent, derange and affect his mind, from the reflex action of the nervous system upon the brain by a deranged stomach; and the excessive doses of quinine that he had taken necessarily affected his spinal cord, and produced a violent ringing in the ears, a confusion of thoughts, a restraint of ideas, and at times, I may say, hypochondriasis.

Q. That was in 39th street? *A.* Yes, Sir.

Q. How did the hypochondriacal tendency display itself in his case?

A. In contrary action to what we suppose to be rational.

Q. How? Cite some incidents—some case?

A. It is difficult to cite any precise data. I only remember that he would say things at one time which he would contradict at another.

Q. Relating to his symptoms?

A. To things generally—in conversation as to certain facts. I do not exactly remember what bearing they had.

Q. Were the facts of any business importance?

A. Not that I remember.

Q. Well, when he moved from 39th street you attended him in 22d street? *A.* Yes.

Q. During the year 1856? *A.* Yes.

Q. How frequently would you attend him during the year 1856?

A. In 22d street I attended more to his wife and children's sickness than his own.

Q. Did you ever have any dealings with him except those of a professional character?

A. Not more than I, would go at times and draw money from him.

Q. In payment for your charges? *A.* Yes, Sir.

Q. How much did your bill amount to from January 1856 to the time of his arrest?

A. In 1855 he paid me within $15 of $600, and in 1856, from January up to August, about $400.

Q. You attended him part of the time during 1856?

A. No, Sir, I did not but very few times. I did not make him many visits.

Q. In 1855, how many times has he sent for you to attend him in one day?

A. Three times he would send for me, and if I would omit once or so he would probably feel offended and express himself so. I never took much notice of what he said.

Q. Was any thing particularly the matter with him when he was so very anxious to see you?

A. No, Sir; I did not deem at such times my presence necessary. I told him that it was an unnecessary expense to call upon me so often, although I was very happy to run up a large bill if he was willing to pay for it, but his disease certainly did not require it.

Q. Do you know any thing about Mr. Huntington's wife wanting to go to Rockaway?

A. I advised her to go there during last summer. According to my ideas she was not in such a condition that she should go just at that time, and I proposed to have her stay here two or three days longer; and he said, "Why cannot she go now? I will hire a train, or a car, even if it cost $250, put a hammock in, put her in it and take her to Rockaway." I said, "That is a very queer idea." It seemed to me to be *rather* out of the way.

Q. Did you advise him to do that? *A.* I did not.

Q. Do you know why he did not do it? *A.* I do not.

Q. Have you been in his house in 22d Street when the music was there?

A. I have been there very frequently during that time, his wife being sick, in an extremely nervous condition. Just before or during convalescence, one night, I entered the house; and every window was lighted up, and you could see it at a great distance; and I heard a blast of horns, trumpets and trombones. I suppose they had ten or twelve pieces of brass instruments in the dining-room. All the doors were open, and his wife in a bed-room on the third floor. I thought that was a very queer arrangement, and asked

him why he did not defer it till his wife's recovery; but he thought it would hasten her recovery. However I told him to stop, but still he would insist upon having it. Under all my advice he would do wrong. Such was continued I think for four or five weeks, from seven until ten in the evening, or eight until eleven. All the doors were open, and all the gas-lights lighted in every room.

Q. How many people were in the house at this time?

A. I think there was Mr Clarke from Buffalo, and his lady, and two sisters and some relations of hers.

Q. At that first time that you spoke of?

A. While the music was in the house?

Q. Yes.

A. I cannot say. I remember there was Mrs. Clarke, and Miss Huntington, and Mrs. Huntington his mother, and Mr. Huntington, his father being present. They were I suppose invited to participate in the pleasure.

Q. How often was this music?

A. I think it was twice a week.

Q. For how long a time? *A.* Four or five weeks.

Q. Where was Huntington during the time the music was going on?

A. Part of the time he would be with his wife in her bed-room, and part of the time he would lie upon a couch, smoking cigars, and whistling with the music, and singing,—a little out of tune sometimes.

Q. Did he smoke in his wife's bedroom while she was sick?

A. Not that I know of.

Q. From what you saw and know of Mr. Huntington while he was a patient of yours, what in your opinion as a medical man, was the condition of his mind as to soundness?

A. I only would say that I would never place confidence in what he said, because it proved so often contrary to what he had said before.

Q. Well, the condition of his mind from what you saw of him?

A. In 22d street I did not see him except during the evening, or a very few times in the morning, as he generally left for his business, but I remember saying to his wife, "Charley," (as I called him) "Charley acts very singularly. He buys horses one day and sells them the next, and in fact he seems to me as if he was "*cracked*," as I would use the phrase.

Q. You told his wife so? *A.* Yes.

Q. When was that?

A. That must have been before she went to Rockaway, in August last I think, in 1856.

Q. Was that your opinion at the time when you said so?

A. I would not say by this expression that I considered him *at the time* insane; still I considered him acting contrary to what any rational man would do, or what I should expect from any rational man.

Q. Did you ever examine him professionally, with special reference to his insanity? *A.* I did not.

Q. Nor ever collected facts upon which you can base an opinion as a medical man? *A.* I have not.

Q. And the opinion you expressed upon that occasion you refer to, you hold to now? *A.* Yes, I do.

Cross-examined by the District Attorney.

Q. You saw him I understand, in his hours of relaxation and ease. You never saw him in his business occupations?

A. I have only seen him there at times when I went down to draw money. I might have seen him probably ten or twelve times at his office.

Q. Most of your communications were at his house? *A.* They were.

Q. How would he pay you, in cash, checks, or notes, or how?

A. He would pay me in checks, generally drawn upon a bank be low where his office was, of which I do not recollect the name.

Q. Do you remember his ever giving you a check that was not good?

A. No Sir, I do not.

Q. Did he ever give you a check or note that was not paid?

A. No, Sir.

Q. He always paid you promptly?

A. Yes, Sir, when he had the money he did pay and overpaid me.

Q. Paid you liberally?

A. Yes, he did. I did overdraw in the spring because I thought things appeared to go too fast (in what way I did not know), so that my bills would be about square.

A Juror: Was there any usury in that overdraft?

A. No; he was always very liberal. If I asked him for $200 or $150 he would give itto me.

Another Juror: He overpaid you?

A. He did not in reality. He may owe me some now. He paid me $2 a visit. My regular charge is $2, which I always got from him. I charged $5 at night, which I always got from him.

Mr. Brady: Did he ever give you a check upon a bank when there was no such bank?

A. Not for me. He was at the boarding-house in Irving place, and I was requested to call upon him, as he owed the house; and he gave me a check, which, I think, was upon a bank that had suspended payment.

Q. What is the name of it?

A. "Continental Bank," or something of that kind. It was in 1854.

Q. What did you do with the check? *A.* I returned it to him.

Q. What did you say to him?

A. I said that it was very strange for him to give me a check upon a bank not in operation.

Q. What did he say?

A. He said, they have money yet to to pay it, although they have suspended.

A Juror: During the time you attended him as a medical gentleman, did you see any thing queer in him, or in his mind, towards his family?

A. No; he always appeared pleasant in his family. He was always affectionate to his family.

Mr. Noyes: Did you, at any time, see any thing queer in his ways or mind, that you would say to his wife, or anybody intimately connected with him, that he was queer?

A. I have often thought so, and expressed myself so.

A Juror: Did you, during the time that you attended him professionally as a medical man, discover any thing peculiar in his mind, by which you might state to his wife, or to any other member of his family, near and dear to him, that they should take care of him?

A. I did not express it, except on one occasion; but I always thought he was acting so that I would not place any reliance upon what he had to say.

Mr. Brady: You did state it to Mrs. Huntington, once? *A.* Yes.

Mr. Noyes: Acting so in what respect. State how.

A. Relating to the first check that was not paid. He gave me a check on a bank (I don't remember the amount), and I found that such bank was not in operation. I returned to him, and he said, "I will give you something else." I would go down, and he could not find what he wanted.

Q. He promised you something or other else, and said if you would go down he would keep his promise?

A. Yes, and he was so changeable in his views, that I thought I would have nothing further to do with it.

Q. Was this want of confidence, of which you have spoken, want of confidence in his word—in his integrity—in his doing what he proposed to do?

A. I always have found that he was willing to do, and was always acting kind as far as I could judge. Whether it was an intention to defer things, or whether it was the want of a well-balanced mind, I had not made up my mind.

Q Whether it was want of integrity or not, you had not made up your mind? *A.* I had not.

Q. But you found he did not observe his promises? *A.* He did not.

Q. Therefore you took care of yourself in the manner that you have suggested? *A.* Yes, anticipating a downfall.

Q. Did you ever say any thing to his wife upon the subject of his being cracked, except in regard to his dealing in so many horses? *A.* I did.

Q. When? *A.* As to placing the hammock in the car for her.

Q. Was that feasible?

A. Yes, but there was no occasion for it. She could better stay at home for a few days longer, and then go to Rockaway.

Q. Was she at the house? *A.* Yes.

Q. And wished to go to Rockaway?

A. I advised her to go to Rockaway.

Q. And he was so anxious to have it done, that he would have a train taken right down? *A.* Yes.

The Court: Do I understand you to give it as your medical opinion, that the defendant's mind, at the time you spoke of, was in any way diseased—morbid?—That he was tending to insanity, or was insane in any respect. Do you mean to give that as your medical judgment?

A. I do not.

Q. When you spoke of his being "cracked," what is your interpretation of that term?

A. He would speak of things one day that he would relate differently again the next day.

Q. Have you reference to the treacherousness of his memory, or to his moral qualities?

A. I should say from his acts that his mind was not well balanced.

Q. Did it occur to you seriously from your intercourse with him, that at any time his mind was unsound?

A. I have not given the matter investigation.

Mr. Brady: We do not call this gentleman upon that particular point.

Q. You never investigated this man's case with a view to give an opinion? *A.* No.

Q. Nor have you been requested to do so? *A.* No.

Q. Nobody has made any suggestion to you to make any examination of Mr. Huntington? *A.* No. These are observations from his actions.

Q. Those expressions that you made to Mrs. Huntington, were private as between you and her, and were not discussed until to-day?

A. I have said to other persons, that Charles was cracked.

Q. How far that irrationality in his conduct indicated any affection of his mind, you never investigated? *A.* I never have.

Q. You said that his conduct indicated a mind not well balanced?

A. Yes, Sir.

Q. How you would designate that, as a medical man, you have not taken upon yourself to say. *A.* No. Sir.*

Mr. Bryan then called Mr. Abel (a tutor of Huntington when a boy), Mr. Tiffany (the jeweler), Mr. Belter (the furniture dealer), Mr. Haughwout (the fancy-china dealer), Mr. Berrian (the dealer in household articles), Mr. Stoughtenberg (Harbeck's book-keeper), Mr. Fisher (Belden's clerk), Mr. Bishop, and a number of other witnesses; none of whom answered.

Mr. Brady stated, that under these circumstances the defence were not prepared to go on any further to-day

The Court suggested that attachments be issued, and declared its intention to hold an evening session to-day, and every day till the case was finished; unless the counsel for the defence would assure the court, that they would finish their testimony on the next day.

Mr. Brady (after a conference with his associate) asked the prosecution how long it would take them to put in their rebutting testimony.

Mr. Noyes replied, that they would take but a very short time, in fact they did not now expect to call any witnesses.

Mr. Brady: Then we will not offer any further evidence as to the recklessness and extravagance of the accused, but will at once, after some other slight testimony, examine our medical witnesses in the morning, and close our case.

With that understanding, the court adjourned until Friday morning, Dec. 26th, at 10 o'clock.

Friday, December 26th 1856.

William Winne sworn. Examined by Mr Bryan.

Q. Are you one of the firm of Tracy, Irwin & Co.? *A.* Yes.

Q. What is their business? *A.* The dry-goods business.

Q. In this city? *A.* Yes.

Q. Were you examined as a witness on the arrest of Mr. Huntington as to the signature of that firm? *A.* No, Sir.

Q. Have you ever seen the note of that firm which was said to have been forged by Huntington? *A.* No, Sir.

[The note could not be found, and the witness was requested to stand aside while the District Attorney looked it up].

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* The examination of this witness elicited a great deal of merriment.

Horace Waldo sworn, Examined by Mr Bryan.

Q. What is the name of your firm ?

A. Waldo, Barry & Co.

Q. What is their business ? *A.* Commission merchants.

Q. Will you look at that note [handing it] signed "Waldo, Barry & Co.," and say if that is the signature of the firm ?

A. No. Sir, not of any of the firm.

Q. Are you acquainted with the handwriting of all the firm ?

A. Yes, Sir.

Q. Does it bear any resemblance to the signature of any of them ?

A. It is not like the signature of any of the firm.

Q. What is the amount of that note ? *A.* $5000.

Cross examined by the District Attorney.

Q. Is there any general resemblance or similarity which would deceive those who were not intimately acquainted with your signature ?

A. I think not.

Q. No general resemblance ? *A.* No, Sir.

Q. Nor in the filling up ?

A. No; nor in the style of the note. There is another thing. All our paper is made payable one bank.

Q. And it has your name upon the side ? *A.* No, Sir.

Q. Had your firm notes out in August ? *A.* Yes.

Q. You are accustomed to have notes out ? *A.* Yes, Sir.

George G. Lake sworn, Examined by Mr. Bryan.

Q. You made a deposition in the complaint against Huntington, for forgery in October last ? *A.* Yes, Sir.

Q. Are you one of the firm of Ubsdell, Pierson and Lake ? *A.* Yes.

Q. What is the name of that firm ?

A. Ubsdell, Pierson, Lake & Co.

Q. When did the name of the firm cease to be Ubsdell, Pierson & Lake ?

A. Last February, 1856.

Q. Will you look at these three notes, one dated June 9th, 1856, for $5084.61, another, August 2d, for $5983.34, and the third, September 1st, 1856, for $5000, all signed "Ubsdell, Pierson & Lake," payable to the order of themselves, and say whether the signatures are genuine ?

A. They are not, Sir.

Q. Do they bear any resemblance ? *A.* Not the slightest.

Q. Are you acquainted with the signatures of all the firm.

A. I am, Sir.

Q. Is there any thing in the style of the notes which resembles those which the firm are in the habit of making ?

A. No, Sir; not in the style of note that we usually give out.

Q. Was the name of the firm of Ubsdell, Pierson & Lake in use when any of these notes were given, in June, August, and September, 1856 ?

A. No, Sir.

Cross-examined by the District Attorney.

Q. Your firm had notes out last summer ? *A.* Yes, Sir.

Q. And previous ? *A.* Yes.

Mr. Bryan was proceeding to call other witnesses for the like purpose, when:

Mr. Noyes stated, that the prosecution would admit that none of the signatures were good imitations, and that most of them were not imitations at all.

Mr. Brady: Very well—and that many of them were fictitious.

Mr. Noyes: We prefer you should prove that.

Mr. Brady: Never mind, we think it sufficiently appears already.

Samuel Randel re-called, and examined by Mr. Bryan.

Q. Have you ever heard Mr. Huntington say any thing with reference to his residing in the country?

A. He has often said that he would do it, and laughed at me because I did. He said that he would not, if any one would give him a house and lot there.

Q. When was this?

A. He has said so, so often, that I cannot say. The last time was a short time before we separated.

Q. Within a few months of his arrest? *A.* Yes.

Q. You separated in May. *A.* About April.

Q. Where did you then live in the country?

A. 150 Eighth Street—Tenth Avenue.

Paul D. Burbank re-called, and Examined by Mr. Brady.

Q. Now, as to this new stable in East 23d street, that was built by Mr. Huntington. Did you obtain a lease for that land?

A. Yes, Sir. I hired the stable.

Q. For him?

A. I hired the stable in my own name—took a lease of it myself.

Q. When? *A.* A little before the 1st October last.

Q. Was there a stable on the lot? *A.* No, Sir, it was a Carpenter's shop.

Q. For how long did you hire it?

A. I hired it from that time—a year from next May.

Q. The 1st May, 1855. Did you hire it for Mr. Huntington, or did he take it from you?

A. Mr. Huntington was going to have a stable. I hired it for that purpose.

Q. That he might have it? *A.* Yes.

Q. Did you consult him upon the terms of the hiring—how long it should be? *A.* Yes, I did, there was something said about that.

Q. What did he say about that?

A. He wanted me to hire it upon as long a lease as I could.

Q. What did it cost to fit up that stable there?

A. I never have reckoned up the cost.

Q. About—give us a rough estimate? *A.* I should think about $150.

Q. What was the rent? *A.* I believe $400 a year.

Mr. Bryan called Wm. H. Harbeck.

Mr. Noyes stated that he was still unwell, and could not attend.

Mr. Bryan also called Mr. Stoughtenberg, Mr. Bishop, and Mr. John H. Harbeck, but they did not answer.

Mr. Bryan: We expect you (Mr. Noyes) will call Fitch and Belden. We will now call the medical witnesses.

Dr. Willard Parker sworn, Examined by Mr. Brady:

Q. Dr. Parker, you are a Physician and Surgeon, are you not?

A. Yes, Sir.

Q. Practicing in the City of New York? *A.* Yes, Sir.

Q. How long have you been in practice in this City?

A. About 17 years, Sir.

Q. Are you a professor in any of the colleges? *A.* I am so, Sir.

Q. What professorship do you hold? *A.* The professorship of surgery.

Q. In the Medical College in this City?

A. Yes, the College of Physicians and Surgeons, as it is called here.

Q. When did you become acquainted with Mr. Huntington?

A. On the 15th of November of the present year.

Q. Where did you make his acquaintance?

A. I made his acquaintance in the Tombs, as it is called—in prison.

Q. You were introduced to him by whom?

A. I was introduced to him by Mr. Bryan, I think.

Q. Did you go there at the request of Mr. Bryan and myself?

A. Yes, Sir.

Q. We had previously to your going there a consultation and interview at your house? *A.* Yes, Sir.

Q. What was the object of our visiting you?

A. You and Mr. Bryan stated that the conduct of Huntington and his actions were very strange, and the question of the soundness or unsoundness of *his mind* had arisen in your own minds; and you wished me to visit him professionally with a view of determining that question.

Q. How often did you visit Huntington for that purpose?

A. I saw him once only, but I had two interviews with him at that visit. I was there about one hour and a half in all I should think.

Q. During the hour and a half, how much did you pass in conversation with him? *A.* Probably one hour of that time.

Q. Did you have any other object in that interview than to inform yourself of the state of his mind? *A.* I had no other object.

Q. Was Dr. Gilman afterwards called in at your suggestion to consider the case in connection with you?

A. Yes, I think it was at my suggestion. The question arose about other medical men seeing him, and I suggested that Dr. Gilman should see him, and rather requested that he should see him.

Q. Was there any particular reason why Dr. Gilman was selected?

A. The reason was that he has devoted a great deal of attention to this subject,—has written upon it, and is also a teacher upon the subject.

Q. Upon the subject of what? *A.* Of medical jurisprudence.

Q. He delivered the introductory lecture at your course this winter, I believe? *A.* Yes, Sir.

Q. And the subject was the relation of the medical to the legal profession? *A.* Yes, Sir.

Q. Now, I will begin with the organization of Huntington generally, without particular reference to his mind. Is there any thing peculiar in that that you observed?

A. He is physically, I should say, a feeble man, and an excitable man—a man of very fully developed nervous excitability. His general deportment was exceedingly quiet, mild, and inoffensive.

Q. When you were introduced to Huntington, was your name announced to him?

A. It was not. My profession was not announced to him.

Q. Nor your name? *A.* Nor my name, I think.

Q. Now, Sir, I will ask you first in regard to the evidence of any peculiarity that you may have found upon the examination of Huntington himself, and then I will speak of the evidence in the case. In the first place, did you discover any thing peculiar in the structure of his mind?

A. There was one feature that was remarkable, and that was his entire indifference to his situation. He seemed to have no sort of appreciation of his situation; no apprehension or care, at all, of any future results. I conversed with him upon various subjects. I asked him if he was aware that the chances were that he would be sent to the State's prison, and his reply was, that it would not be so; that he intended to injure nobody; that he had no idea of doing that, and he did not think it could be done. In a short time I brought up the subject again, designedly, watching with great care his whole features, and his actions closely, and I referred to his family, and what would become of them if he should be sent to Sing Sing; but so far as I could see, this had no perceptible influence upon him; none whatever; no more than if I had addressed myself to a stone; but he said very quietly and calmly that he never intended to injure any one, and therefore could not be sent to prison. I then asked him if he had done the like before, and he replied "twice," and that it had been discovered that he had "made paper." I then asked what was done to him, and he said that he did not intend to do any wrong, and that therefore they let him go. I inquired of him again why he did so,—why he had made these papers. "Well," he said "I liked it." And I then asked him what he would do if he was permitted to go out; and he said, that he should go home and see his wife, and if they requested him to come back he would do so. I then asked him further about going out—if in the event of his release he would commit the same act again, and he said he would. I then asked him why? and he replied, that if the desire came over him he should do it, and nothing in the world would prevent him from doing it.

Q. During all these statements, if I understand you, you watched him very closely—very attentively, to see if there were any indications of excitement or feeling?

A. I did, Sir, most especially so. That was the direct object of my questions. I did so particularly when I appealed to him in reference to his own family, to see if there were any emotions manifested whatever, and there were none.

Q. It has been proved here that he has been a great smoker—smoking fifteen or twenty cigars a day, for a long time. Now I will ask you whether that practice to that extent upon his organization, would have the effect of reaching his mind in any degree?

A. It might do so, or it might not. It did not strike me as having any special bearing one way or the other. I then went into a history of his family, and his own habits of life, which took up, among other things, how he had occupied himself during the last several years of his life, and especially since he came to this city; and then I enquired about his health, and I found that he had been to San Francisco (but I do not know for how long a time he had remained there), and that on his return he had had the

Chagres, or Panama fever, as it is called, which had made him sick for a long time, I do not remember how long. Upon my inquiring about his sleep,—which has a bearing upon his mental condition—he stated that he had not been in the habit of sleeping well for the last two or three years, that he did not sleep over three or four hours during a night. I then inquired if he did not sleep because he was disturbed or anxious about business matters, and he said that that was not the case at all. I then inquired of him if he dreamed, and had unpleasant dreams, and he said "none whatever." He said that he had a pain in the head a large portion of the time, and that at times he suffered very much indeed from "blacksmiths' sparks" (as he called them) in his eyes, and had done so for several years. I use his own language when I say "Blacksmiths' sparks," as they are seen to come out of a blacksmith's chimney on a dark night. That is what he meant. He said that he suffered from constipation of the bowels and internal hæmorrhoids.

Q. Now, what other examination did you make with a view to inform yourself of his mental condition?

A. I inquired about his object in raising this money, and he gave me no definite answer. He said, that he had no object—that it was done without any special object, so far as I could see. He stated, that if he was walking at any time along the street, and the thought struck him that he would like to make any piece of paper, he would step into a store, make the piece of paper and use it, and that he liked to have a good bank account in Wall Street. I asked him if he had laid by any money, or made any provision for his family; and he said, that he had made no provision,—that he did not care about money. He said, it would not matter if this room (in the prison) were full of money, and if he had the impulse come upon him to make the paper, nothing under heaven could prevent his doing it, unless you were to cut off his right hand. I asked him then, if he could take care of himself, if he could get out—if he would make his escape, if he could do so; and he said, if he had the opportunity he would not avail himself of it. He then said, if he was permitted to go out, the first thing he would do, would be to go home, see his wife and children, and, if they requested him to come back again, he would come back.

Q. From this examination what conclusions did you come to as to the character of his mind, and its condition?

A. He seemed to me to have a mind which operated very differently from the mass of minds. My conclusion was that he was unsound in mind. One of the laws of our nature is self-preservation. He seemed to have no sort of feeling, or any sort of thought or care in regard to that whatever; and the only absorbing subject that seemed to be in his mind,—which does not perhaps come up to monomania,—was, that of "making paper," and carrying on "operations" in Wall Street. That seemed to be the tendency of his mind.

Q. I observed that you used the expression "unsoundness of mind"—that he was "unsound in mind"?

A. Yes. I used the word *unsound.* "Unsound" and "insane" are convertible terms.

The Court: I understood you to say that you did not think,—or did I misunderstand you?—that it would come up to what you termed "monomania?"

A. I should not regard it as *monomania* upon that subject,—still, it seems to be the all-absorbing subject upon his mind; and he said, that if he were out he would go into "operations" and "make paper" again.

Mr. Noyes: Did he say that he would go into Wall street?

A. No; he did not say that he would go into Wall street, but he said that he would make this paper again, if he got out.

Mr. Brady: What do you mean by *monomania* when you speak of it? How do you define it?

A. I should define it that a man's mind operates naturally, rightly, so to speak, upon all subjects excepting on one subject, or one or two subjects.

Q. And in reference to that?

A. In reference to that subject, the moment it is touched it awakens a new train of actions, and thought, and manifestation, which actions are entirely at war with what is called the action of a sound mind.

Q. As to the opinion you formed and expressed of Huntington's mind, was it entirely dependent upon his statements?

A. It was entirely dependent upon his statements, and my own examination into his physical condition.

The Court: Do I understand you to say, that you define monomania to mean unsoundness of mind upon one or two subjects?

A. I mean soundness on all subjects except it be on one, and that may be getting money, or hatred, or any thing else.

Mr. Brady: Assuming that he is of unsound mind or insane, how would you characterize that unsoundness;—by any specific name or merely as insane?

A. I do not know that I could give it any specific name.

Q. The forms of insanity are infinite, are they not? *A.* They are, Sir.

Q. Do the medical profession undertake to give a separate nomenclature, or name, to each peculiar development of insanity?

A. They do not.

Q. That is admitted to be quite impossible? *A.* That is so, Sir.

Q. By the most eminent men? *A.* I think so, Sir.

Q. In treating some peculiar forms of monomania, as homicidal mania, kleptomania, specific terms are used?

A. Those terms are made use of, and they are made use of as expressive of these monomaniacal conditions.

Q. Though some forms are thus defined by name, I suppose a great number have no name?

A. Some have no name; we cannot make a name for them that I know of.

Q. What books do your profession consider in this matter of medical jurisprudence to be high authorities?

A. Dr. Ray's of Providence is a high authority, and Dr. Beck's works are high authority.

Q. How high do you rate the authority of Dr. Ray?

A. I think he has no superior upon the subject.

Q. No superior in this country?

A. No, Sir, and perhaps in no other.

Q. Do you know him personally?

A. Yes, Sir, he was a fellow student of mine.

Q. How old a man is he?

A. In the neighborhood of 50, 51 or 52, perhaps.

Q. What is his present position?

A. He is now at the head of the Lunatic Asylum of Rhode Island—the Butler Asylum, I think it is called.

Q. For how long?

A. I do not know how long. It must have been a number of years—many years.

Q. Have you had your attention called to the testimony of the father of Mr. Huntington?

A. I have not. It was in the papers, but I did not find time to read it.

Mr. Brady then read the testimony of Israel Huntington, from the short-hand writer's transcript.*

Q. Now, Sir, assuming that those facts stated there, are true, as proved by Mr. Huntington, what does that narrative indicate or furnish, to enable you to express any opinion as to the tendency of Huntington to unsoundness of mind, or as to his actual unsoundness of mind?

A. The whole of that would go to confirm my opinion which I was led to form when I saw him in prison. He started early in life with this disease of scrofula, which had probably some bearing—how much I am unable to say—upon the condition of his brain and nervous system; and then the fact that, on his mother's side, there was this form of insanity, and the fact that insanity showed itself upon his father's side, especially when it showed itself in those persons in the latter period of life—all would go to establish the fact to start with, that there was a very strong hereditary tendency to insanity. If those are the facts, these are the deductions that I should make from that statement.

Q. Were any of those facts known to you before you formed an opinion from an examination?

A. They were not known to me until I heard them here now.

The Court: Did you say a strong tendency to insanity?

A. I do not recollect. I said "strong hereditary tendency to insanity," I believe.

Mr. Brady then read the report of Mr. Day's evidence,* and continued the examination as follows:

¶ *Q.* Assuming that to be the result of this testimony, and the facts to be true, do they furnish any aid or corroboration in coming to a conclusion about his unsoundness of mind.

A. It does, Sir. It is corroborative of what we have had before, and strengthens my own opinion.

Q. Now, Sir, assuming that the facts stated by Mr. Day, and those by Mr. Israel Huntington have been proved to the belief and satisfaction of the jury, as bearing upon the tendency, hereditary or otherwise, of Huntington to insanity, I now proceed to read an hypothesis of certain other facts which we claim to be proved in this case, and to take your opinion on them. I put the suggestion now in the manner suggested by Chief-Justice Shaw, as stated in the case in 7th Metcalf.‡ He says "The proper question to "be put to the professional witness is this: If the symptoms and indications

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* See same at pp. 111–116, *ante.* † See same at pp. 200–201, *ante.*

‡ Comm, vs. Rogers, 7 Metcalf, 505. See also 1 M. and Rob. 75.

" testified to by other witnesses are proved, and if the jury are satisfied of " the truth of them, whether, in their opinion, the party was insane, and " what was the nature and character of that insanity; what state of mind " did they indicate; and what they would expect would be the conduct of " such a person, in any supposed circumstances." Now, the question I put is this:

If the witnesses already examined in this case have proved, and the jury believe it to be true, on such testimony, that the defendant, having a permanent residence in the city of New York, and being established there as a broker, and having large business credit there, forged several names to commercial paper; that all the actual persons whose names were forged resided in the City of New York; that the forged and spurious paper was placed and suffered to remain in the hands of persons who received the same as security for loans to the defendant; that the defendant adopted no means to prevent such persons from inquiring and ascertaining whether such paper was genuine or not; that he had no actual intent to defraud or injure any persons whose names were forged; that he suffered one or more of the forged securities to remain in the hands of the person lending money upon it until after it was due, and adopted no means to prevent the same from being presented for collection to the persons whose names upon it were forged; that he made no arrangement to escape or prevent his arrest if any of such forgeries were detected; that, on the contrary, his house and equipages and acquisitions of property were procured and adjusted with the apparent design to remain permanently in the City; that moneys acquired by means of such forgeries were needlessly wasted by the defendant in reckless purchases of superfluous articles; that in some instances he used forgeries to obtain money on credit when no security would have been required at the time for the loan or credit, and none was asked; that he kept at the time of his arrest three spans of valuable horses, and had just finished a new stable in which he intended to keep his horses; that he purchased eight acres of land at Yonkers, near this city, in September last, for $24,000, on which he paid $20,000, with a view to build a residence thereon; and, as the record shows, owned this at the time of his arrest; that such payment was made out of means obtained on forged instruments made by him; that he bought household articles and personal apparel indiscriminately and in largeand extravagant quantities, without regard to his actual wants; that his household at the time of his arrest consisted of himself, wife, two small children, and the following servants: two or three coachmen, one or two grooms, one man waiter, and three or four female servants; that he was in no other way intemperate than in the immoderate use of cigars, smoking from fifteen to twenty per day; that he was ordinarily of a cheerful disposition, but for some time preceding the series of forgeries of which this is one, he was greatly depressed; that he was remonstrated with in his household about his extravagance, but persisted in it, and stated that he was making money enough to warrant it; that he kept several bank accounts, involving deposits and drafts amounting to millions, during a period of about one year, but kept no books or entries from which the state of his affairs, or the character or extent of his dealings, could be ascertained with any approach to accuracy; that he made no preparation to accumulate or save any property for himself or family, in the event of exposure, although solicited to make provision against a failure in business or other like misfortune; that he paid large

amounts to creditors from whom he had been released, out of money obtained on this series of forged paper; that, having it in his power, he omitted to destroy evidences of his forgeries; that he procured a young and inexperienced and honest person, a relative, to prepare notes which he subsequently converted into forgeries; that when first arrested on the only forgery then detected, he was bailed in $20,000, with two of his alleged victims as sureties, and was suffered to go at large for a day without making any effort whatever to escape, but made and kept an appointment to meet these two alleged victims at the house of one of them in the evening following his arrest, and there in effect admitted that nearly all the commercial paper which he had delivered to them were forgeries; that the next morning, when at large and not under arrest, he made a voluntary assignment to these two alleged victims, giving them all his property and effects to the exclusion of all other persons, without regard to the amount of the property assigned, or the amounts of his indebtedness to these two alleged victims, the property simply to be divided between them equally, share and share alike, without reference to the amounts due to each; that his connection with all the other forgeries was soon afterwards made known to the police authorities, amounting to about $500,000, and that upon a re-arrest, he was committed to prison, where he has since remained, cheerful and confident that he will not be punished.

Upon the preceding symptoms and indications being proved to the satisfaction of the Jury, answer as follows:

1. In your opinion, was the defendant sane or insane when the forgery in question was committed?

2. If you think he was insane, what was the nature and character of that insanity?

3. What state of mind as to sanity did those symptoms and indications manifest?

4. What would you, as a professional man, expect, to be the conduct of the defendant, if, for any purpose for business or pleasure, he desired to obtain money on credit?

Now, Sir, that is what we claim to be the result of some of the evidence in the case, and upon that assumption, I now ask you the questions which the law directs:

Q. Upon the preceding symptoms and indications being proved to the satisfaction of the Jury, was the defendant, in your opinion, sane or insane when the forgery in question was committed?

Have you sufficient recollection of those facts, Doctor, or shall I read it again?

A. I think I understand it, Sir. Supposing now, that I knew nothing about the case, and that simply what you have just read to me was submitted to me, I should say it was possible that all that might take place as the result, almost, of unparalleled recklessness; but, knowing what I do of his case from personal examination, and also from the testimony which I have heard, I should say that those actions, were actions of an unsound or, an insane man. No sane man would perform such actions, or act in that way.

Q. The question then branches off thus: If you think he was insane, what was the nature and character of that insanity? In what way would you designate it, if at all?

A. I cannot. It would be difficult. I could not bring it under the head of monomania altogether; and yet, if I were to define it as monomania, I should say it was monomania upon the subject of "making paper," and obtaining moneys on paper and the like; not that he had any motives beyond that, that I could discover; and then the other point in which he showed it was, his total inattention to his own personal preservation.

Q. Then such a party becomes hypochondriacal—shows that tendency—is that a circumstance which adds to the conclusion, that his mind is unsound? Is it one of the phenomena?

A. It is one of the phenomena of an unsound or insane mind.

Q. Then the other branch of this question is: What would you, as a professional man, upon this case that now exists in your mind, expect to be the conduct of the defendant, if, for any purpose of business or pleasure, he desired to obtain money upon credit?

A. My impression is that he would make some more of this paper.

Q. Now, Doctor, among the medical gentlemen of intellect and standing in the United States, so far as you are concerned, is there recognized such an insanity as is called "moral insanity?" *A.* There is by the profession, Sir.

Q. Have you the means of telling how general that opinion is?

A. No, I have not the means of stating how general that opinion is; but my own opinion is that the mass of well-educated physicians entertain that view.

Q. How did you distinguish that, in your way, from ordinary or general insanity?

A. It is a form of insanity which seems to have its origin in some defective organization of the brain, so that that portion of the brain which acts upon a given point,—upon a given subject, as, for instance, the judgment or the imagination—is diseased, and therefore the manifestations of that diseased organ will also be abnormal.

Q. And as it does not relate exclusively to purely intellectual processes, for that reason I suppose it gets this designation of moral insanity?

A. Yes, Sir, moral insanity;—the intellect must still be unclouded. That may be given as the opinion of medical writers:—a man, for instance, may have his eyes put out, and he will hear just as well as he did before; the moral functions may be diseased, while the intellectual part, his causality, his comparison and the like, and his imagination may be unimpaired.

Q. So that ordinarily, if you grant the premises of a madman, his conclusion is logical? *A.* Yes, as a general fact.

Q. And if a man who has the *delirium tremens* thinks the devil is after him, he will adopt the greatest possible caution to keep out of the way of that devil? *A.* Yes.

*Mr. Brya n*then read the testimony of Dr. Simonds,* and *Mr. Brady* continued: Does that aid you at all in strengthening the opinion you have given, or confirm it? *Witness:* It confirms it.

Mr. Bryan then read the testimony of Dr. Füllgraff,† and *Mr. Brady* continued: Does that strengthen or confirm your opinion?

A. It confirms it.

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* See pp. 171–173, *ante.* † See pp. 238–238, *ante.*

Q. In all cases where you wish to ascertain the insanity of a person you must converse with him?

A. Yes, or have an opportunity of watching his actions.

Q. Was yonr object in conversing with Huntington, to get at the facts of his history, or observe his manners?

A. I had but one single object, and that was to ascertain whether he was a sane minded rational man or not. My conclusion was that he was not.

Cross-examined by Mr. Noyes.

Q. You had never seen Huntington before the time you spoke of, had you? *A.* No, Sir, not to my knowledge.

Q. And you saw him only once?

A. I saw him twice, but on the same afternoon.

Q. You mean the same day? *A.* Yes.

Q. At what interval of time?

A. Perhaps fifteen minutes or half an hour.

Q. How long was each of your interviews with him?

A. The first one I should think was nearly three quarters of an hour.

Q. And the last? *A.* It may have been fifteen minutes.

Q. Did you examine him in connection with anybody else?

A. I did not, Sir.

Q. Have you ever consulted with anybody else upon it?

A. How do you mean, Sir?

Q. I mean consulting with any other medical man in reference to his condition?

A. I have had some conversation with Dr. Gilman since his visit, but previously, none whatever.

Q. Was Dr. Gilman's visit before, or after yours? *A.* After mine.

Q. How long? *A.* I do not know.

Q. Dr Gilman and yourself are in the same medical college?

A. We are, Sir.

Q. Has any other medical man examined Huntington, but Dr. Gilman and yourself, to your knowledge?

A. I am unable to say. I know of no other.

Q. How long before you did examine Huntington, were you called upon by the counsel of whom you have spoken to do so?

A. I do not recollect the length of time. It could not have been over two or three days.

Q. Did you go there by appointment?

A. Yes, by appointment. I went there to meet one of the gentlemen who was to introduce him to me.

Q. Who did you meet there?

A. I met Mr. Brady, and Mr. Bryan, I think, came in soon afterwards.

Q. Was any information, so far as you know, given to the District Attorney, or public authorities, that any examination of this man, with reference to his insanity, was about to be had?

A. I know of none. I was requested to have the whole thing done quietly, and that no one should know that I was a physician.

Q. No notice was given to the District Attorney, or public authorities, to your knowledge, but you were requested to have the thing done quietly?

A. Yes, Sir.

Q. Did you suggest that there ought to be in such a matter as that notice given to the authorities? *A.* No, Sir.

Q. What did you suggest in answer to the suggestion that it should be kept secret, and that you should go *incog.*?

A. I do not know that I made any suggestion whatever.

Q. Did you acquiesce in it? *A.* I simply went there and left my carriage outside when I went in.

Q. Have you ever since communicated to the District Attorney, or any body connected with the prosecution, the fact that you made an examination? *A.* No.

Q. Did you request it to be done? *A.* No.

Q. Has anybody else, to your knowledge?

A. I know of nothing of the kind.

Q. When you arrived there, was Mr. Brady there, or did he come in afterwards?

A. He was there waiting.

Q. Huntington therefore was apprised of your intended visit?

A. I do not know that he was.

Q. You knew, however, that the appointment had been made before?

A. I knew the appointment was made between Mr. Brady, Mr. Bryan, and myself.

Q. Do you know any thing, then, Sir, in reference to Huntington's condition, except what you have heard from the evidence that has been read here, and what he told you upon these two occasions?

A. I know of nothing beyond that, excepting I saw a brief statement of his actions which was made out by his wife.

Q. His wife made out to you a brief statement of his actions?

A. A brief statement was made out, and put into my hands.

Q. When was it put into your hands?

A. I am unable to say whether it was put into my hands before I saw him, or immediately afterwards.

Q. Where is that paper?

A. After reading it, I handed it back to Mr. Bryan.

Q. And as to the truth of the facts contained in that paper, you knew nothing?

A. I knew nothing.

Q. Was that a very elaborate paper? *A.* No, Sir.

Q. I wish you would remember whether it was put into your hand before or after your interview with Huntington?

A. I do not know that I can. It was put into my hands, but whether it was put in before or after my interview with him, I do not know. I recollect the paper perfectly. It was in a brown envelope, and when I had leisure, I looked it over, and put it back into my drawer, and afterwards returned it.

Q. About how many sheets was it?

A. It was on common small letter paper—small size—covering, perhaps, three or four pages.

Q. Was it soon after you were there?

A. About the time,—whether before or after I do not know.

Q. Did you return that to Mr. Bryan. *A.* Yes, I did.

Mr. Brady: Here it is, Mr. Noyes, if you want it.

Mr. Noyes: Never mind. Doctor, there is such a thing as simulated insanity? *A.* Yes, Sir.

Q. Would notice of an examination being made by a medical witness to a person who wished to be understood as insane, facilitate the simulation of insanity? *A.* It would, I should suppose.

Q. Very much? *A.* Yes.

Q. Is it not therefore a very prudent precaution, that he should not know anything about it? *A.* I should say so.

Q. Did you enjoin any such thing upon the parties who applied to you to examine him? *A.* I do not know that I did.

Q. And you do not know whether he was informed in reference to your visit or not? *A.* I do not, Sir.

Q. In short, then, no precautions were taken upon that subject so far as you were concerned? *A.* No.

Q. Is simulated insanity very easily detected, or is it very difficult?

A. It is difficult at times; some forms of insanity are difficult to detect.

Q. Did you ask Huntington, on these occasions, all the questions that you asked him in the presence of his counsel?

A. Neither of his counsel were present when I examined him at the prison; I saw him entirely alone.

Q. On both occasions? *A.* On both occasions.

Q. Was that done at your request or at theirs?

A. At my request.

Q. Did you ask him any thing upon the subject of the reason why he committed these forgeries. *A.* I did.

Q. I believe you have not stated it?

A. He gave none whatever.

Q. None whatever?

A. None, Sir, excepting to state that he should do the same thing again, and that he liked a good bank account.

Q. Are you quite certain that he gave no reason excepting that?

A. I am, perfectly so, for I asked him questions with a view to all these matters:—whether he put by this money, what he proposed to do with it, whether he had expended it in gambling-houses, whether he was in the habit of going with women, and every thing like that; but I could sift out no motive whatever.

Q. Did he deny going to gambling houses?

A. He said that he had never visited a gambling house in his life except one, which was in San Francisco.

Q. Did he deny ever going with, or keeping any women?

A. He stated that his reputation as to keeping women, or having anything to do with women, was beyond the truth altogether;—he said he had a reputation for being a great women's man, but he said that he was not so.

Q. He denied it? *A.* Yes, exactly so.

Q. When you asked him whether he had laid upany thing, what did he say? *A.* He said he had not.

Q. Did you ask him what he had done with his acquisitions by the forgeries?

A. I do not know that I asked him that question out and out Sir. I

do not remember any answer to any such question. The only statement was that he had no money put by,—that every thing was gone.

Q. Did you ask him how it was gone?

A. I presume I did, but I do not remember his answer.

Q. You do not remember what he told you upon the subject of how his money was gone?

A. No, only in connection with the subject of gambling.

Q. You remember that he did assert that all his money was gone?

A. I asked him what he had done with his money—if he had money laid by, and he said "No." I asked him if he had made any provision for the future, or put by any money, and he said "No." I asked him if he had been in the habit of gambling, and he said "No." I asked him if he had been in the habit of squandering his money upon lewd women, and he said "No."

Q. Did you ask him whether any thing was laid by?

A. I did. I asked him if he had made any provision for the future, and put by money.

Q. And then he said "No"? *A.* And then he said "No."

Q. Upon what he said to you, and from what you judged from his appearance, would you pronounce him of unsound mind, from your examination of him, and from his appearance?

A. No; not simply from his appearance.

Q. From your examination of him?

A. From my examination of him, I should.

Q. Independent of everything else?

A. Independent of everything else.

Q. You would pronounce him, then, of unsound mind?

A. I would pronounce him of unsound mind.

Q. Do you mean by that, that you would pronounce him to be insane?

A. I mean by that—that I should pronounce him to be insane.

Q. Do you mean entirely insane?

A. I do not know that I know what that means.

Q. I mean not being a monomaniac?

A. I think that his insanity partakes more of monomanism, than of any other form.

Q. Do you mean by that *moral insanity?*

A. Yes, I think he was morally insane.

Q. Now upon what subject is he morally insane in your judgment?

A. He appears to have no conception that he has committed any wrong; he does not appreciate this wrong as a sound moral man, or sane man would.

Q. Do you mean that he is insensible to the consequences of crime?

A. I think he is incapable of appreciating the crime of which he now stands charged.

Q. Do you think he is incapable of knowing that forgery is a crime?

A. I do not know that he is, incapable. I do not say that.

Q. You say that he is incapable of appreciating the crime with which he is now charged, but that he is not incapable of knowing that forgery is a crime?

A. I think he knows that forgery is a crime, but I think he does not appreciate the bearing that that crime has upon his character?

Q. You mean then that he does not appreciate the stigma, or the disgrace of the crime?

A. I think he does not.

Q. Have you any doubt now that he knew that forgery—such a forgery as this,—was a crime?

A. I have not—I think he knew it was a crime.

Q. Is it a mere insensibility to the consequences of the crime, and the disgrace which it inflicts, upon which subject you say that he is insane?

A. No, it is not.

Q. What then?

A. He has a diseased organization, and consequent upon that diseased organization he has this strong tendency to "make paper"—to raise money—and there is his monomania, and he will do the same thing again. Although he may know it is wrong, he will do it again.

Q. He knows it is wrong? *A.* Yes, very likely.

Q. Do you not mean then, simply, that he is insensible to the consequences of his crime?

A. Yes, I do mean to say that he is insensible to the consequences of his crime.

The Court: As personal to himself?

A. Yes; and those interested in him.

Mr. Noyes: What do you understand by the word "depravity," or "depraved mind?"

A. I mean by a depraved mind, one that is not honest.

Q. Do you embrace in your definition of a depraved mind, one that is insensible to the consequences of crime? *A.* No, I do not.

Q. Have the goodness to state your idea of a depraved mind, or depravity, a little more at large?

A. A depraved mind, as I understand it, is a wicked mind that acts from motive.

Q. Do you mean that acts from *adequate* motive?

A. I do not think that is necessary.

Mr. Noyes: Because if it is, there is no adequate motive for crime ever.

Witness: Well, a depraved mind, as I understand it, is a wicked mind; and that mind acts wickedly, or does wickedly, when motives are put in its way, sufficient to make it act.

Q. Although the motives may be inadequate?

A. They may be inadequate so far as we can judge, but they are not inadequate for him; for if they were, he would not commit the crime.

Q. Suppose the motive was inadequate to him?

A. Then he would not do it.

Mr. Noyes: I do not know that that would follow. You do not understand it, then, to be essential that the motive should be sufficient to compel the party to do the act, in order to take away from it the effect of its being a depraved mind?

Witness: No; I think that if a man has a depraved mind, in order to act *depravedly*, so to speak, he must have a motive that impels him to that action, and it must carry him up to that action.

Q. Have you ever had any intercourse, professionally, with depraved criminals? *A.* I have seen them, Sir.

Q. Have you ever had any considerable acquaintance with them professionally? *A.* I have not.

Q. Have you ever studied the operations of the minds of such men in reference to the consequences of their offences, or otherwise?

A. I have not, Sir, particularly.

Q. That is a subject with which you are unacquainted?

A. I am not unacquainted with it, but it has not come within the general scope of my studies.

Q. Have you not sufficient information and knowledge upon that subject to know that the most depraved men are, to a great degree, insensible, or entirely insensible, to the consequences of their offenses; men who care nothing about them?

A. I think it cannot be denied that depravity increases in proportion as a man yields to the tendencies of a depraved mind; and in the course of life the conscience may thus be nearly destroyed. I think there may be such a condition.

Q. There may be such a condition of the mind, when the conscience is obliterated, that there is an insensibility to the consequences of crime?

A. Yes.

Q. Suppose there has been a career of crime from childhood, of various sorts, unchecked up to the age of thirty-five, would it not result, naturally, in an insensibility to the consequences of crime.

A. I suppose it would to a certain extent.

Q. Would not such a course of life, and such an insensibility as I have mentioned, be consistent with all that you observed in the conduct of Huntington in your conversations with him in prison? *A.* I think not, Sir.

Q. Why not?

A. Well, Sir, in the first place, there is nothing about the man that looks like a hardened villain. There is no such expression in his face, so far as that is manifested, but there is a deficiency of mental power. I examined him with a view to his simulated insanity. I talked with him, and brought up subjects likely to affect his feelings, affections and emotions, but there was no influence exerted upon him at all. He was quiet, and seemed to think that he had intended no wrong, and therefore ought to be free of all punishment.

Q. Is not that precisely the same sort of insanity which a hardened man, after a course of crime for years, might exhibit if he was playing a part before a medical examiner?

A. A hardened villain might possibly do it, but not as *he* did it.

Q. Will you say, in your opinion, that no hardened villain could do it successfully? *A.* I have never seen one who could do it successfully.

Q. I ask you your opinion upon that?

A. My opinion is, that it could not be done with a person who is accustomed to examine into these things. There would be some emotion—some manifestation—exhibited.

Q. It might be very faint, but you think that it would be detected?

A. Yes, I think it would be detected.

Q. Is not simulated insanity sometimes difficult to detect?

A. Yes, but not when you follow it up. They cannot simulate changes that may occur in the countenance, as the expression of the eye, the blushing or pallidness that may overspread the face. They cannot simulate them *all*, for they increase in proportion to the particularity of the examination.

Q. You do not mean to say by that, that simulated insanity is not capable of detection?

A. No. I say it is usually capable of detection.

Q. I thought I understood you to say in several instances that it had not been detected? *A.* No, Sir.

Q. From your interview, then, your chief reliance for the expression of your opinion, is placed upon his want of appreciation of his situation, growing out of the alleged charges against him?

A. Yes, and I account for that on the ground that he has a diseased organization.

Q. When you say that he has no appreciation of his situation, because of that diseased organization, you mean, of course, by that mental organization?

A. No, I do not. I mean the organization of the brain—I mean the disease of the brain.

Q. Do you mean diseased moral organization?

A. I mean the disease of the functions,—of the organs of the brain.

Q. What particular organ is diseased. *A.* The brain.

Q. What portion—what is it that is diseased?

A. In the first place, I refer to the fact that he is troubled with his vision, that he has a steady constant pain in his head, and has had it for years, that he has had sleepless nights, and that he has these "blacksmith's sparks," flying before his eyes.

Q. You rely upon all these facts as true, because he told you so?

A. Yes, I rely upon those facts as true, because he told me so, and I rely *now* upon my own evidence in the case. I have nothing to do now with what his father stated.

Q. Assuming these facts to be true, that he had constant pain in his head, a difficulty of vision, and something that appeared like blacksmith's sparks before his eyes—these facts are items in forming your judgment about him—assuming them to be true? *A.* Yes, Sir.

Q. Do you mean to say that his mental organization was such that he could not resist the impulse or tendency to commit forgery?

A. I do; the "tendency," that is the word, Sir.

Q. That is the point then upon which you placed it—that his mental organization was such that he could not resist the *tendency* to commit forgery? Now, why could he not resist it?

A. Because of his diseased organization. I do not mean mental organization. The organization of the mind I know nothing about.

Q. Do you say physical or mental? *A.* I say physical.

Q. You say so because of his diseased *physical* organization?

A. Yes.

Q. What was the disease of his physical organization which prevented him from resisting the tendency to commit forgery?

A. I am unable to give you the pathological anatomy of the case.

Q. Is that equivalent to saying that you are unable to give the reason why he was unable to resist the tendency to commit forgery in consequence of his organization? *A.* No, Sir.

Q. State what it is?

A. He had certain manifestations—certain symptoms. I am *now* speaking of what *I* saw.

Mr. Noyes: I am confining myself to what occurred *there*. Will you give the reason I have just asked for?

Witness: Now then, taking up his case and examining it as I did, and finding these manifestations of a diseased organization physically—and those diseases were, first, those symptoms which are indicative of congestion of the vessels of that part of the brain that furnishes the nerves to the eye; next, the steady pain in the head; and then, again, another fact that he referred to, as if there were trip-hammers or machinery in his head,—which I believe I did not mention before,—and then the fact that he does not sleep well at nights, sleeping only three or four hours;—putting those facts together, they lead us back at once to the inevitable conclusion that there is a diseased organization.

Q. I do not see that you have answered my question. I want to know what is the disease in his physical organization which prevented him from resisting the tendency to commit forgery?

A. Well, in the first place, your question was whether I knew the brain was disorganized or diseased, and I said that I could not give you a pathological anatomy of it. It is a matter of inference that the brain is diseased. Now, again, as to the next question: How is it that I entertained the idea that he has this tendency to forgery? Is that the question?

Q. No, Sir. My question was:—What was the difficulty in his physical organization which prevented him from being able to resist the tendency to commit forgery?

A. That is the difficulty, the precise nature of which I cannot explain. It is difficult to give a reason.

Q. You suppose he has a conscience? *A.* I think he has.

Q. Do you suppose it acts like other men's consciences? *A.* I do not.

Q. Why not? I do not know.

Q. You don't know? *A.* No, Sir.

Q. Why do you think it does not act like other men's consciences?

A. Because he has done what other men would not do, having a conscience.

Q. Is it not, Sir, because he has committed a great many forgeries?

A. I do not know that it is. I do not believe that it is.

Q. When you said it was because he had done what other men with consciences would not do, what do you mean by that? Did you not refer to his crimes? *A.* Yes, I do; I mean all his actions throughout.

Q. You say that his conscience does not act like that of other men, because of his offenses?

A. I did not say because of his offenses. I say it does not act like other men's. Why it does not act like that of other men's I do not know.

Q. Is Huntington laboring under any insane delusion?

A. I do not know that he is, Sir.

Q. Is he laboring under any delusion?

A. I have not discovered that he was, Sir.

Q. Is he laboring under any delusion, whether insane or not, which propels him to commit forgery?

A. I do not know that he is.

Q. Is he laboring under any delusion which forbids his committing forgery? *A.* I think not, Sir.

Q. Is he laboring under any delusion which prevents him from abstaining from committing forgery?

A. I think he is not laboring under any delusion, if I understand what you mean by it.

Q. I will ask you the same questions, substituting the word *hallucination.*

Witness: Explain what you mean by "hallucination."

Mr. Noyes: With great respect, *I* have the honor to examine *you*, and shall take *your* explanation of the term.

Q. Is he laboring under any hallucination which compels him to commit forgery?

A. I know of nothing of the kind, Sir.

Q. Any thing which forbids him from committing it?

A. I know of nothing which prohibits him.

Q. Is he laboring under any hallucination which prevents him from *abstaining* from committing it?

A. I think he is laboring under an organization which impels him to commit that deed.

Q. He is laboring under an organization?

A. Yes, Sir, which leads him to commit that deed.

Q. Is he laboring under an organization which leads him to commit any other offense?

A. I do not know. I have discovered nothing of that kind.

Q. But you think he is laboring under an organization which leads him to commit forgery? *A.* I do, Sir.

Q. Have the goodness to state what that organization is?

A. That I am unable to do.

Q. Is it physical?

A. It is. That is my opinion.

Q. Is it not mental? *A.* It is not.

Q. So, then, it is his physical organization, when his mental operations are all right?

A. I think his mental operations are not right. They would be if his physical organization was.

Q. They are bad because his physical organization is bad?

A. Yes; because his physical organization is bad.

Q. Is your testimony that this tendency to forgery exists in his brain, because of the organization of his brain?

A. Yes, Sir; and that organization is a diseased organization.

Q. But it exists, as I understand you, with the knowledge on his part that it is forgery which he is committing, and that it is a crime?

A. That is my opinion. I would add: he does this as a forgery, and knows that he does it, but how far he appreciates it as a crime, I do not know.

Q. He knows it is a crime, and forbidden by law? *A.* Yes.

Q. Now does this organization consist in any undue existence of what is termed the faculty of acquisitiveness?

A. I think it does not. There is no evidence of that at all?

Q. What is it, then, the propensity or indulgence of which his physical organization compells him, or induces, or leads him to exhibit in forgery?

A. What that organization is I do not know. I cannot tell whatthe organization is which furnishes the propensity which leads to forgery.

Q. You think it is not acquisitiveness?

A. No, I think not; for it does not seem to be for the sake of what he

makes, but that he has a fondness for that kind of business; is fond of making paper.

Q. The love of forgery, growing out of his organization?

A. Yes, out of his physical organization, the result of disease.

Q. And in your opinion, as a medical man, *that* exists in connection with a perfectly mental understanding on his part that it is forgery, and wrong?

A. I think so, Sir. That is my opinion.

Q. Do you mean to say, as a medical man, that this propensity is so strong that he cannot resist it? *A.* No, Sir, I do not.

Q. To what extent, then, do you suppose his power of resistance is impaired by his physical organization?

A. I am unable to say how far. But my opinion is that if he were let out to-day, he would go to work as before, and make this paper.

Q. To what extent do you suppose his power to resist the temptation to commit a forgery is impaired by the diseased organization of which you speak? Is it partial or total?

A. I do not know. But, then, his capability to refrain from the commission of forgery is not perfect by any means. I mean to say that if let out to-day, without restrictions, he could not resist this tendency to commit the same thing.

Q. To what extent has his physical organization rendered him incapable?

A. That I cannot answer. I could not say what motives you might bring around him, which would be capable of binding him. You *might* bring motives that would *wall him in*. But if let out, as he is now, without restrictions, he would do the same thing.

Q. Is his physical organization such that he could not resist the temptation to steal?

A. I do not think it is. I do not know.

Q, Is his physical organization such that he could not resist the temptation to lie? *A.* That I cannot say. I do not know that he does lie.

Q. You heard his father's testimony that the three things he was characterized for before twenty one were *untruth*, *stealing*, and *forgery*.

A. I think that the same condition, the same organization that then existed, and resulted in the commission of those deeds, have existed ever since, exists now, and that he has increased in that tendency.

Q. Has it increased with its indulgence?

A. Probably it has.

Q. Is there nothing in his physical organization which prevents his power to resist the temptation to steal and lie.

A. Taking the testimony of his father, there was a tendency to lie and steal, unless there was something to counteract it.

Q. Is it your opinion that he had, when you examined him, a physical organization to lead him to steal and lie?

A. I saw nothing at all of that.

Q. Do you mean that, from your own examination and his father's testimony, in addition to forgery he had a tendency to steal and lie?

A. Taking his fathers' testimony, I should say he had a tendency to steal and lie in his earlier years.

Q. So you would not be surprised if his organization would exhibit itself in stealing and lying, as well as forgery?

A. I would not be surprised.

Q. Would the physical organization of which you have spoken, have a tendency to lead him to get up fictitious banks?

A. I do not know that it would not. He is fond of getting up fictitious paper of any kind.

Q. As a medical man, from your examination, and his father's testimony, is his physical organization such as to lead him to get up spurious banks, spurious securities, and spurious notes?

A. I should say so, because it is part and parcel of the same affair.

Q. Is it such as would lead to getting up fictitious burial cemeteries?

A. I should suppose it would lead him into the whole train of operations of that description.

Q. Do you mean the whole train of vice and crime?

A. No; I mean such as forging paper, or getting up artificial banks, &c.

Q. And to stealing and lying?

A. If those were early habits, I do not know that he would give them up. I do not know but those habits may have been trained out of him.

Q. If, then, he were proved to have been guilty of stealing, of lying, of getting up fictitious banks, circulating spurious bank notes, and getting up these cemetery companies, would you, as a medical man, pronounce his physical organization such as to lead him to do all those things?

A. I think so.

Q. Would you pronounce, as a medical man, that he did not know these were all offenses and all wrong? *A.* No, I would not.

Q. Would you pronounce that he mentally did not know that those offenses would lead him to punishment? *A.* No, I would not.

Q. Is, then, the substance of what you wish to say in reference to all those offenses, that he would be incapable of appreciating with due force the disgrace and stigma that would attach to him and to his family for committing those acts?

A. I believe he is incapable of appreciating it.

Q. Is that all in substance that you mean to say on the subject—that he is incapable of appreciating in their force the disgrace and stigma which the commission of those offenses would inflict on himself and his family?

A. I think he has no appreciation of that sort, nor of the punishment that might be inflicted.

Q. Is that, after all, any thing more than a statement in another form of what you said on the direct examination; that he did not seem to have in full force that principle which is common to us all and to human nature —self-preservation?

A. No, it does not. My declaration on that point was made on the ground that he was not desirous to make any exertions to liberate himself, to get out of the way and relieve himself, when under bonds,—manifesting no apprehension or anxiety about himself in reference to any punishment that would ensue. The stigma is one thing, and self-preservation is another. I refer to our conversation, where I called up subjects that would be likely to awaken strong emotion, but they made no impression on him. Then, again, he would not make any attempt to escape.

Q. Do you consider the fact of a man who commits an offense not making an attempt to escape, any item of importance showing insanity?

A. I do, an item of considerable importance, that a man does not attempt to take care of himself.

Q. Are your opinions, as a medical man, that you suppose the rules of law in reference to insanity wrong?

A. I do not know much about the rules of law; but I think some points about it wrong. If a person has a fever, disease of the brain following, and he afterwards commits a murder, my opinion is that he ought not to be hanged for it. I do not know much about the rule of law, but I believe it looks at the mind as if it were capable of being dissected and analyzed.

Q. I will read questions submitted to the Twelve Judges, together with their answers, in the trial of *Mc. Naughton.**

The first query is, "What is the law respecting alleged crimes, committed by persons afflicted with insane delusions in respect to one or more particular subjects or persons; as, for instance, where, at the time of the commission of the alleged crime the accused knew he was acting contrary to law, but did the act complained of, with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some supposed public benefit?"

To this the Judges reply that, assuming the inquiry to be confined to those persons who labor under such partial delusions only, and are not in other respects insane, they are of the opinion that notwithstanding the party accused did the act complained of, with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to the law, by which expression they understood their Lordships to mean the law of the land.

Now, do you agree with that rule?

A. I would like to be certain that the person was sure he was violating the law, supposing he did.

Mr. Noyes: The question assumes that he did.

Mr. Brady: That is confined to the question of mental delusion, and has no relation to moral insanity.

The Court: It assumes, too, that the person had no general delusion.

Mr. Noyes: It assumes an insane delusion, and that he knew he was wrong.

Witness: I should say that he was not punishable.

Mr. Noyes: You differ with the law in that respect. I read again:

The second and third queries are: "What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder for example), and insanity is set up as a defence? In what terms ought the question to be left to the jury, as to the prisoner's state of mind at the time when the act was committed?"

The Judges state that these two questions can be more conveniently answered together, and their reply is, that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. They add that the question of right and wrong should be put in reference to the particular act with which he is charged.

Do you agree with that rule as a medical man?

Witness: He commits this act, and commits it under a fit of insanity?

* Cited in Ray's Medical Jurisprudence, p. 44.

Mr. Noyes: Yes.

Witness: He does it under the influence of this insane impulse?

Mr. Noyes: Yes.

Witness: Then I think he is not responsible.

The Court: In other words, you think he could not help it?

Witness: Yes, he cannot help it; and all you can do to counteract it is to put him under particular restraints or influences.

Mr. Noyes: The fourth query and answer is:

"If a person, under an insane delusion as to facts, commits an offense in consequence thereof, is he thereby excused?" To this the Judges reply, that on the assumption that he labors under partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defense, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

Do you agree with either of those branches or both?

A. I think he would not be responsible. He would be an insane man in either case.

Q. Counsel on the direct examination put a question based on a long list of assumptions. How far was the assumed absence of intent to defraud or injure, an item of your answer? *A.* A large one.

Q. If he appropriated the money to his own use, in the indulgence of his whims, and to supply his wants, would that make any difference in the answer which you gave?

A. No, I think not. No matter how he spends his money, if he has no intention to defraud.

Q. To what extent in your answer, had the supposition contained in that question, that he took no measure to prevent the people whose names were forged from ascertaining it?

A. That would only show recklessness in the transaction of his business.

Q. It shows a want of care in the commission of the crime?

A. That is all.

Q. Is the most important item in this series, the one of no intent to defraud?

A. That is one among others—perhaps one of the most important.

Q. The appropriation of the money to his own use in any way, would not qualify your opinion in that respect?

A. No, Sir; because I see no connection between the two. His money he squandered in any way, without any aim. There seemed to be no especial disposition to be made of that money.

Q. Does the fact that he procured other persons to aid him in the forgeries, form an important element in your opinion as to his insanity?

A. I think that no sound man would do that.

Q. Suppose the person so employed was his brother-in-law?

A. It is *possible* that he might have arranged with him in that way.

Q. Would you say a man was of unsound mind, if he employed a stranger to help him to forge?

A. Not necessarily. It would be an item among other things.

Q. Would the admission of the crime, when charged with it, be an important item in your judgment?

A. No, Sir, it is not.

Q. Would the largeness of the amount, say $500,000—be an important item? *A.* No. it has no bearing on the question at all.

Q. Collect from the mass of assumptions in that question those on which your opinion is chiefly based?

A. It is the latter portion of it, where he made no provision at all for his family, did this matter without any motive, did it because he had a fondness for it,—went on in this way without any special purpose for which the money was appropriated—when this matter came out, took no measure to provide for himself, &c.

Q. It is, in the first place, the absence of intention to defraud?

A. Yes.

Q. Then the fact that he made no permanent provision for himself or family? *A.* That is something.

Q. Then that he made no effort to escape?

A. That is another.

Q. Then that he manifested no compunction after his arrest?

A. Those are items, or points, in the whole; but not all. For instance, I see no motive. Men generally have a motive for what they do. He seems to have had none. He might have some motive besides that of making a special provision; but I have discovered none.

Q. Is the recklessness of his expenditure an item?

A. No, not the recklessness, but the *manner* in which the expenditure was made, constitutes an item.

Q. Do you not know that money acquired by undue or roguish means, is usually expended as suddenly as made?

A. It is very often the case.

Q. I will ask you now a question, based on some suppositions of ours: Suppose these things to be true as to the prisoner: that he forged the best names of the best firms in New York; that he repeated those systematically; that he used the proceeds as capital in his business and operations; that when arrested, although perfectly cool, there was a red spot in his forehead, where drops of perspiration stood when he was charged with the forgery; that when arrested he did not admit the forgeries, but charged them on another, alleging that he received the forged papers from a third person; that it was untrue that he received such forged paper of said other person, and when confronted with that person, who denied having given it to him, he admitted that it was forged, and that he himself had forged it, and expressed his sorrow for what he had done, and said that he would make all the restitution in his power,—what would be your opinion as to his appreciation of the right or wrong of forgery, upon these suppositions?

A. It would be that he appreciated the thing as wrong, upon those suppositions.

Q. That he knew what the crime of forgery was?

A. That he was conscious he had done wrong.

Q. And that it was a crime? *A.* I suppose so.

Q. Would it be also your opinion that he knew the consequences of that crime?

A. I should infer that to be the case. The red spot of sweat on his forehead would have no effect with me.

Q. Do not men often perspire, when charged with a crime they have committed?

A. Yes, sometimes a cold sweat, and they often turn very pale, and are otherwise affected.

Q. You stated that the absence of any exhibition of feeling was an item in proof of insanity? *A.* Yes, Sir.

Q. What importance would you attach to the fact that he told a falsehood as to getting the forged paper, for the purpose of securing himself?

A. That would show that he had some intellect left, and was endeavoring to use it to save himself.

Q. Those assumptions all being true, you would consider that he knew he had committed forgery? *A.* He knew that he committed forgery, I think.

Q. Would you, from those suppositions, be of the opinion, as a medical man, that he appreciated his position?

A. I should infer, from his actions at that time, as you state them, that he did, in a measure, appreciate his situation.

By Mr. Brady:

Q. As I understand you, Dr. Parker, all insanity of which you speak you refer to physical causes?

A. The insanity of which we spoke to-day I refer to physical causes.

Q. Those hallucinations or delusions—that has nothing to do with moral insanity? *A.* Necessarily not at all. Both may exist.

Q. What we call intellectual insanity, applies to the mental process alone? *A.* The process of the intellect.

Q. And moral insanity is as much a disease of the brain as the other, but manifests itself in the will, the feelings and affections, and not in the mental or intellectual process? *A.* Yes.

By Mr. Noyes:

Q. Is it your notion that a man's physical organization may be such that although he knows he is committing a crime, or doing something contrary to law, and knows to some extent the consequences of committing that crime, yet he is not responsible for the crime? *A.* Yes.

Q. Is *Prichard on Insanity* a standard work? *A.* Yes.

Q. Is *Winslow?* *A.* I do not know.

By Mr. Brady:

Q. In reference to your seeing Huntington, was it deliberately intended that he should not know you were a physician?

A. Yes, that my name was not to be given. He was not to know that I was a physician.

Q. You had never seen Huntington before? *A.* No.

Q. And so far as you know, he did not know you?

A. So far as I know he did not.

By Mr. Noyes: Do you know that he did not know you?

A. I could not say.

Chandler R. Gilman sworn. Examined by Mr. Brady.

Q. How long have you been a physician practicing in this city?

A Thirty years, or a little over.

Q. Are you a professor? *A.* Yes, Sir.

Q. Of what?

A. Of Obstetrics, Diseases of Women and Children, and of Medical Jurisprudence.

Q. Were you at any time physician of the City Prison, called the Tombs?

A. For two years, I think, in 1835 and 1836. I do not remember exactly the time.

Q. And saw lunatics almost every day? *A.* Almost every day.

Q. Have you given attention to the subject of insanity?

A. I have been obliged to teach on that subject, and of course have given it attention.

Q. When did you first see Huntington?

A. I cannot fix the date. Some considerable time ago. He had been in prison, I believe, several days.

Q. Where did you see him?

A. In one of the rooms of the city prison.

Q. Did he know you?

A. I am not certain whether he did or not. I think he did.

Q. Did you announce your name to him?

A. I did not; but whether Mr. Bryan mentioned my name or not, I do not remember. My impression is that he did.

Q. Did you converse with him?

A. I had some conversation with him. Most of it was between Mr. Bryan and him, at my request, that I might the better observe him. I wanted to watch him carefully. I then talked with him myself.

Q. What was the point you were seeking?

A. My object was to appreciate the state of the man's mind.

Q. When you instructed Mr. Bryan to converse with Huntington, did you specify any subjects?

A. I think I did, but I do not know what they were.

Q. What is the result of your examination?

A. I listened to the conversation between Mr. Bryan and Huntington some time, and then talked with him myself. I asked him a good many questions in regard to the charge of crime for which he is now tried. I questioned him about his motives and so on. I had considerable talk with him, but I did not examine his case thoroughly that day.

Q. When did you afterwards?

A. I saw him once afterwards, but cannot fix the day. I told his counsel that I would go some time or other, but I did not know myself what day.

Q. After all the examination you have given to this case, what conclusion have you come to?

A. The point that struck me most strongly, in reference to this man, was, in the first place, his utter impassivity. It was impossible to excite any emotion in him. He was perfectly confident of his escape from this charge—perfectly sure that he would escape. Though I assured him to the contrary, still it was the same thing; he seemed utterly careless—"Oh! it would all come right," or to that effect. It was impossible to excite this man's natural feelings. I referred to his children, and made one sudden exclamation about one of them, that I supposed, at the time, would be sure to excite his feelings, but it did not at all. He seemed to look at the whole affair as though he had failed in business, and that it was troublesome at the time, but that there was soon to be an end of it.

Q. What was your conclusion on all this?

A. My conclusion was that this man's mind was unsound.. The only doubt I had (and I mentioned that to Dr. Parker) was whether this was not all feigned—were we not deceived about it? and for that reason, I went the second time alone. When I came away, the impression on my mind was, that this individual is certainly not sound. It seems to me to the last degree impossible that he was of sound mind.

Q. How would you characterize that unsoundness?

A. I do not know that I can give it any name, other than that it was insanity or unsoundness.

Q. Would you say intellectual or moral?

A. I think the two things were mixed together. If this man had no intellectual disturbance, he would appreciate his position, and not talk of getting out of this as he did. Then, as to his moral sense, there does not seem to me to be any of it.

Q. Now, whether insanity be intellectual or moral, what is your view of it?

A. I refer insanity always to physical organization.

Q. You take it, therefore, that the brain is diseased in all cases where insanity exists? *A.* I think so.

Q. Insanity of intellect is that which affects the intellect alone?

Q. The brain is injured. In one case the intellect is impaired; in another the moral nature is disordered. They are both insane. Both result from physical change in the brain.

Q. And what that physical change is, it is entirely impossible to tell?

A. Entirely.

Q. That is not within the compass of human knowledge?

A. It is not, so far as I know, within the measure of the acquired knowledge which we at present have.

Q. In these instances of moral insanity, the intellect of the person who possesses it may remain comparatively undisturbed?

A. In some instances a man's intellect may remain undisturbed.

Q. And in the case of a man who has a mania for murder, or setting buildings on fire, he may be aware that it is criminal, and yet be insane?

A. Yes.

Q. You heard me read a question to Dr. Parker. Putting that question to you, upon the same assumption, in connection with the testimony of his father and schoolfellow, I ask you, these things being proved, was the defendant, in your opinion, as a medical man, sane or insane when the forgery was committed.

A. I have almost no doubt on the subject. It seems to me impossible to interpret the facts in any other way than by that of the man having a diseased mind.

Q. You have already answered that you would not give that insanity any particular name. What would you think of the conduct of the defendant if he got money on credit?

A. I would generalize. If a man be insane, it is impossible to know what he will or will not do. By studying the diseased propensities, you may come at an opinion.

Q. Is a large amount of cunning at all incompatible with insanity, when shown in carrying out the subject on which the man is insane?

A. Not at all incompatible.

Q. So that a man insane, may be as shrewd and crafty in endeavoring to commit an act, committed under the influence of insanity, as a sane person? *A.* Certainly.

Q. As a general rule, do insane persons admit or deny that they are insane?

A. As a general rule they deny it. It is a rule which applies to the majority.

Q. And when restrained they are urgent to be set at liberty, on the ground that they are perfectly sane? *A.* Commonly.

Q. I find in Beck's Medical Jurisprudence, Vol. 1. p. 722, that Esquirol remarks: "There are madmen in whom it is difficult to discover any trace of hallucination; but there are none in whom the passions and moral affections are not disordered, perverted or destroyed. I have in this particular met with no exception." Does that correspond with your observation?

A. That corresponds with my observation.

Q. Now, Beck says: "There remains to be considered another and disputed form of mental disease, which, in conformity to the nomenclature of many distinguished observers, I have denominated *moral insanity*. It has professedly been adopted, because physicians have not been able to detect any delusion or hallucination in the persons affected. The intellectual faculties appear to have sustained but little injury, but the feelings and affections are perverted and depraved, and the power of self-government is lost or greatly impaired." Does that correspond with your idea? *A.* Yes.

Q. *Prichard* says that "Moral insanity or madness consists in a morbid perversion of the natural feelings, affections, inclinations, temper, habits, and moral disposition, without any notable lesion of the intellect, or knowing and reasoning faculties, and particularly without any maniacal hallucination."

A. That is, according to my judgment, an admirable definition.

Cross-examined by Mr. Noyes.

Q. By whose request did you examine Huntington the first time?

A. Mr. Bryan's.

Q. At whose request the second?

A. At my own suggestion to study the case out. I went to see him alone, and have a long conversation with him.

Q. Your first examination did not satisfy you. How long were you with him the first time? *A.* I should think three-quarters of an hour.

Q. And how long a portion of that time did you talk with him.

A. I should suppose about one half.

Q. The last time, how long did you talk with him?

A. I suppose I may have talked an hour.

Q. In the presence of anybody?

A. In the presence of a son of my own—a lad about ten years old.

Q. Any other person? *A.* No other person.

Q. Did you take any measure to inform the District Attorney, or any of the public authorities about it? *A.* No, Sir.

Q. Did you desire that it should be a private affair?

A. I suggested nothing about it. They asked me to examine him, and I said I would.

Q. You think he knew you when you came—knew you were a medical man? *A.* I think he did. I know he did the second time.

Q. Was he brought on to the corridor?

A. No; the first time I saw him was in a room on the left hand side of the entrance—one of the consultation rooms.

Q. Did you notice any thing further from your conversations with him than, first, what you speak of as his utter impassivity or insensibility to his condition, and the difficulty or impossibility of exciting any natural feeling in him? Did you notice anything more?

A. Those were two things that I should throw together. That was his general impassivity.

Q. Was there any thing else you noticed peculiar about him?

A. Yes, I mentioned that he was utterly deluded in reference to his position. He could not appreciate it.

Q. Why do you think so? Because he said so?

A. I knew nothing but what I saw of him.

Q. He did not seem to be aware of the danger in which he stood? You based that idea on what he said?

A. Yes, and on my cross-examination of him.

Q. Is it not the same in reference to his impassivity? You cannot say that he did not feign all this? Is not all that capable of being dissimulated?

A. That depends on the amount of skill a man has in detecting these things. Just as on the cross-examination of a witness you might find out a lie, or not, according to your skill.

Q. But the lie is capable of being found out, if it is there, and the dissimulation in such a case as this?

A. Yes, it is capable of being found out.

Q. Are you prepared to say, as a medical man, beyond all possibility of doubt, that all this was not simulated?

A. I am not prepared to say any thing as matter of knowledge, but only as matter of opinion. I went there to cross-examine this man, and with the view that it was possible he was playing or acting a part. I cross-examined him a long time, to find out whether he was or not. But I may have been mistaken in my conclusion. I do not claim infallibility.

Q. Have you any doubts that he knew the result at which his counsel wished you to arrive in your examination?

A. I do not know any thing about that.

Q. He knew you to be a medical man? *A.* He did.

A. Did you ask him whether he knew he was committing the crime of forgery, and how he came to commit it when he knew it was wrong?

A. I did not. I told him that I wished to ask him a number of questions, and I wanted him to answer me truly.

Mr. Noyes: Then I do not think you cross-examined him as well as I would.

Witness: Possibly not. Remember your greater experience. (Laughter.)

Q. You did not intimate the purpose for which you went to examine him?

A. No; if he found it out it was without my telling.

Q. Did he give you incoherent answers?

A. No; his answers were never incoherent.

Q. What excuse did he give for the act?

A. He gave none at all. He said, "I did not mean to do any thing wrong; it is impossible that I should be convicted." He spoke in that

vague way. He talked of the affair as a man would of *usury*, who knew it was wrong *but took it.*

Mr. Brady: We do not call that "usury" any more, Doctor; we call it "*presents.*" (Laughter.)

Mr. Noyes: Well, we may call doctors' fees presents, too. I hope the doctor may have plenty of them. *Witness:* Thank you.

Q. You say that it is to the last degree improbable to call him sound. Is it all you can say on the subject, that the probability is, from your examination, that he is of unsound mind?

A. All I mean to say is, that having examined this man I believe him to be insane. I may be mistaken, but that is the best of my judgment.

Q. Do you pronounce him, in your opinion, generally insane?

A. I pronounce him insane. I make no distinction. I do not believe in a man being partially insane. There is a state of things which is called monomania, but I call him insane. According to Lord Brougham, the mind is a *totality.*

Q. Do you pronounce him insane on any particular subject?

A. I suppose that Huntington has that mixture of moral and intellectual insanity which is very common. I do not believe that Huntington's intellect is sound, and I believe that his moral nature is diseased—his propensities. I suppose this man to be what he is, in consequence of physical disease.

Q. Do you pronounce him insane on any particular subject—what is called a monomaniac?

A. I do not. I doubt whether he has any monomania.

Q. He is not a monomaniac on the subject of forgery, or any other, to your knowledge?

A. I should doubt whether it amounts to monomania. I believe Huntington to have a diseased brain, and it would not shake my conviction in the case, if (which God forbid) he were to stand up now and drive a knife into you. I do not believe he would be at all morally responsible for it. I suppose it would be the act of a diseased brain.

Q. Do you believe he has a homicidal monomania?

A. No. I believe when a man has moral insanity, it may develop itself in any of those ways.

Q. Do you mean by moral insanity, a general depravity?

A. "Depravity" is not a scientific word. If you mean by depraved mind, a diseased mind, and if that is the result of physical organization, it is insanity.

Q. Do you mean that his propensities are such as would lead him to commit offenses, and among others, murder, without responsibility—to commit any offense whatever, and you would not consider him responsible?

A. Certainly not. I believe him to be insane.

Q. Do you believe he would know it would be murder to do what you have suggested? *A.* I have no doubt of that.

Q. Would he know that it was a crime, and against the law?

A. Certainly.

Q. Would he be aware that he was liable to be hanged for it?

A. He might be. That would not affect the question at all. *Hadfield* certainly did.

Mr. Noyes: Never mind; we will speak of Hadfield by and by.

Q. You would consider him to be irresponsible, although he knew he was going to commit the crime of murder, that it was against the law, and that he would be hanged for it? *A.* Yes, Sir.

Q. Do you say the same thing in reference to the question of forgery; that he knew that he was committing a crime, and that it was punishable with the State Prison?

A. I have no doubt he did. I cannot swear that I asked him the particular question. I have no doubt in my own mind that he knows it.

Q. How in reference to stealing?

A. He would know it was wrong, no doubt.

Q. And so as to falsehood? *A.* Certainly.

Q. What is there in his physical organization, that would lead him to commit any of these offenses? *A.* I do not know.

Q. Do you believe, as your opinion, that he would be led to commit them by any insane delusion? *A.* Not at all.

Q. On hallucination? *A.* Not at all.

Q. Delusion or hallucination has nothing to do with it?

A. Entirely out of the question in this moral insanity.

Q. You place it on the ground that he is morally insane?

A. I suppose he is morally insane, and I believe in his case there is also a certain amount of intellectual insanity.

Q. In what respect is the intellectual insanity exhibited?

A. I think in his conduct generally. In the first place he was excessively careless in the use of money; he squandered his money. Then he was utterly improvident both as to money, and as to providing for his personal safety. Then he was entirely reckless in the way of committing those forgeries. All these things look to intellectual insanity; and, taken together, I think that they exist in a degree which is inconsistent with intellectual soundness.

Q. Do you think it is impossible for these things to exist in combination without a man's being insane?

A. It is a mere question of degree. Many people are careless of money, and in other things; but still recklessness of itself will prove insanity, when there is enough of it.

Q. State one particular subject on which he is insane.

A. In reference to this matter of forgery, I have my doubts whether he is insane on that particular subject. It is a debatable point. The question arising is difficult, and it is this: would he, if he had been placed under circumstances likely to develop that propensity, have an equally irresistible tendency towards violence? If he would, of course he is not a monomaniac on that subject, but generally insane. If that man had been brought up in the West, it is probable that his moral obliquity would have been shown in acts of violence. I think this man is generally insane. I doubt whether it is right to call it a monomania; and I differ with Dr. Parker in that respect. I understood him at first as expressing some hesitation about it.

Q. State the precise respect in which you differ with Dr. Parker.

A. In respect to this man's moral insanity, whether it be monomania or general mania. My impression is that he is generally insane, and that the fact of its having run in this respect is attributable to accident.

Q. You agree with the definition from *Prichard*, read by Mr. Brady. Do you pronounce Huntington's a case of madness, according to that?

A. Moral insanity, according to that definition. I use the words "insanity" and "madness" as convertible terms.

Q. In what do you consider his natural feelings perverted?

A. In his inability to appreciate his own position, or the effect which this thing would have on his children. This man seems to be an affectionate father, and yet he did not appreciate this. He spoke lightly of his wife, too; I do not mean lightly as to her reputation, but as if there were nothing in this to affect her; said she had just gone, or he would introduce me, just as if in his own parlor. He alluded to my boy; and I inquired if he had a son; to which he replied "Yes." I blurted out, "My God! what a horrible inheritance that boy is growing up to!" I was sorry I had said so, the instant it was out, thinking it would pain him. But he did not seem to feel it at all; he said it would all blow over.

Q. Does it not all come back to this: his want of appreciating his offenses? *A.* That is part of it.

Q. What else?

A. His want of power to sympathize with the distress that would overtake his wife and children.

Q. Would you pronounce a man insane, because of his insensibility to the consequences of his crime to himself, family and children?

A. Not that alone.

Q. Would you consider that an item of importance?

A. According to its degree.

Q. Is there any case on record in medical history where the insane tendency is alleged to commit forgery?

A. I knew of but one. I believe about the beginning of the present century, a man was acquitted on the ground of insanity, who was charged with forgery.

Q. Would you pronounce Monroe Edwards insane?

A. I do not know any thing about him.

Q. Would you pronounce *Mitchell*, the member of Congress from Niagara District, insane?

A. I now hear of that case for the first time.

Q. Did you ever pay any attention to the case of Fauntelroy, the last person executed in England for forgery? *A.* I read it.

Q. Do you know whether that was attended with the same sort of reckless extravagance, as here?

A. I do not remember. I do not attach a great deal of importance to Huntington's extravagance.

Q. Is not that generally attendant on the procurement of money by undue means? *A.* Yes.

Q. I find your definition of insanity in an Address published as the best definition you have been able to make: "Insanity is a disease of the brain by which the freedom of the will is impaired"?

A. I admit that, Sir.

Q. I ask you in what respect the freedom of Huntington's will was impaired?

A. I suppose Huntington did these things when he knew they were wrong, in consequence of his having a disease of the brain.

Q. He had will enough to do them. In what respect was his freedom of will impaired?

A. The temptation was such that his power of resistance, diminished by physical organization, could not overcome it.

Q. In other words, he could not resist the temptation, from his physical organization?

A. From mental defects, dependent on physical organization.

Q. Your definition of *moral insanity*, is in these words,—

There is yet another form of insanity, which, though fortunately rare, sometimes demands investigation in courts of justice; and on which, I regret to say that a majority of the legal profession have yet to acquire the first rational idea. I refer to moral insanity. This form of madness presents to us the appalling spectacle of a disease of the brain the chief symptom of which is an irresistible impulse to commit crime.

Is it your opinion that Huntington had an irresistible impulse to commit crime? *A.* I suppose so.

Q. And no one crime in particular?

A. When I have once satisfied myself that a man is insane, I think it is unsafe to say that he would not do any particular thing.

Q. You go on to speak of the difference between your views and those of Lord Eldon, and then say: —

Now, Gentlemen, I have just one remark to make on these cases, and this way of disposing of them. It is your plain duty to take the ground that medical science has established, beyond all reasonable doubt, that moral insanity and these blind impulses which the law so confidently ignores, are positive entities, the results of physical disease.

A. That is my opinion, beyond doubt.

Q. You have heard the questions submitted to the Twelve Judges, and their reply. Do you agree with them? *A.* I do not.

Q. I refer to 4th Denio, page 28, the case of *The People vs. Freeman*, where Judge Beardsley says:—

Where insanity is interposed as a defence to an indictment, for an alleged crime, the inquiry is always brought down to the single question of a capacity to distinguish between right and wrong at the time when the act was done. * * *
The insanity must be such as to deprive the party charged with crime, of the use of reason in regard to the act done. He may be deranged on other subjects, but if capable of distinguishing between right and wrong in the particular act done by him, he is justly liable to be punished as a criminal. Such is the undoubted rule of the common law on this sub'ect. Partial insanity is not, by the law, necessarily an excuse for crime, and can only be so where it deprives the party of his reason, in regard to the act charged to the criminal.

What is your opinion of that?

A. I refer you to the pamphlet containing my Address, from which you have been reading.

[Witness refers to the following, which Mr. Noyes read].

So much for the knowing right from wrong, as a test of sanity; and so much is administration of the law better and more humane than the abstract idea of the law. Now when the medical witness is required to apply this test, in any of its forms, to a case, he should, I think, ignore it altogether. If asked, "Does this man know right from wrong?" my answer would be, "I suppose he does: almost all insane people do."

Officer Bowyer recalled, examined by Mr. Bryan.

Q When those complaints were made against Huntington, what amount of forged paper came into the hands of the police?

A. I think I received from Messrs. Belden, Harbeck & Bishop $560,000 and odd. I think I have a memorandum which gives the amounts (witness refers to it).

From Belden, ...	$215,000.
" Harbeck, ...	310,000.
" Bishop & Co.	49,000.

I cannot be certain of these figures, but I got over half a million.

Q. Do you remember that Harbeck was asked if he had any more?

A. I do, Sir.

Q. What did he say?

A. He told me he had no more. He gave me up all the paper he had then.

Q. Did he then say that was all? *A.* I think so.

Q. Did you ask Mr. Belden the same question? *A.* Yes, Sir.

Q. And he said it was all?

A. Yes. I asked them to give me all the forged paper they had, and I would take it to the parties to ascertain about it.

Q. Did Harbeck give you up two stock notes of Bishop & Co., for $20,000 each. *A.* No, Sir.

Q. Did he give you two checks of Hoffman & Leonard—one for $21,000 and one for $25,000?

A. I did not see them, Sir.

Q. Did Mr. Belden give you any paper of that kind, or any part of it?

A. No, Sir.

By the District Attorney.

Q. You asked for the forged collaterals, which they gave up readily, all they had, I believe? *A.* Yes, Sir, so far as I know.

It was agreed between the counsel for the prosecution and defence, that the depositions of the witnesses taken before the Police Magistrates on the complaints made against the defendant by reason of several forgeries; and also the several notes and papers attached to such depositions; and also the several indictments found against the defendant on these charges; and also all the books which were found in the office of the defendant after his arrest, and which were produced on this trial; and also all the papers which have been here produced relating to his purchase of the eight acres of land at Yonkers; and also the two assignments—the one to Halsey and the other to Bishop; and also the confession of judgment from the defendant to Bishop & Co.; and also all the papers and proceedings in the civil suits pending between the parties interested in the conflicting assignments; and also all the other papers referred to and not formally put in evidence at prior stages of this trial,—should, for the purposes of this trial, be considered as in evidence, and that the same might be referred to and used on both sides, and inspected by the jury.

It was also agreed that Mr. Bryan might procure and put in statements derived from the officers of the several banks in which the defendant kept

accounts avowing the nature and extent of the defendant's dealings with those several institutions.

Here follow copies or descriptions of the several documents, books, papers and matters above mentioned, except those which have been already inserted and sufficiently described.

DEPOSITIONS

IN THE GEORGETOWN BANK AFFAIR.

1 THE Farmers AND Merchants Bank 1

No. 10,525. Will pay B.

to the Bearer ONE DOLLAR on demand.

GEORGETOWN, D. C. September 24th, 1852.

Figure of a Sailor Boy leaning on a bale, and with a spyglass in his hand. ONE. Bust of Washington. ONE. Figure of a Woman with a sheaf of grain on her lap.

H. FREEMAN, Cash'r. G. H. SMITH, Pres't.

CIRCULATION SECURED BY STOCKS.

TWO. THE Farmers AND Merchants Bank TWO.

Figure of Mercury. No. Marine view, with an ocean steamer in the foreground. 1315. A. Head of Lafayette.

Will pay TWO DOLLARS on demand to the Bearer. GEORGETOWN, D. C., Sept. 24th, 1852.

2

H. FREEMAN, Cash'r. G. H. SMITH, Pres't. TWO

CIRCULATION SECURED BY STOCKS.

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3 No. 2,670. A. DISTRICT OF COLUMBIA. 3

Figure of an Eagle—in the background the National Capitol. Female figure looking on marine view.

Large 3, with Minerva, contemplating Sphinx.

THE Farmers AND Merchants Bank

Will pay THREE DOLLARS on demand to the bearer. GEORGETOWN, D. C., Sept. 24th, 1852. 3

H. FREEMAN, Cash'r. G. H. SMITH, Pres't.

CIRCULATION SECURED BY STOCKS.

RAHWAY, N. J., Nov. 29, 1852.

Farmers and Merchants Bank of Rahway, pay to A. B. C., or bearer, one thousand dollars $1,000.

WM. H. CLARK.

Endorsed—Charles B. Huntington. Pay J. D. Vermilye, Esq., Cash, or order. Pay F. King, Esq., Cashier or order.

City and County of New York, ss.

John A. Patmor, of No. 11 Wall street, being duly sworn, deposes and says, that he came to Exchange Office at said place for the purchase of uncurrent bank bills, on or about the 1st of November, 1852, Charles B. Huntington called on this deponent at his office, and desired to make arrangements with this deponent to purchase counterfeit or forged, commonly called bank bills, purporting to be issued by the Farmers and Merchants Bank of Georgetown, District of Columbia, and this deponent informed said Huntington, that he would deposite with this deponent one thousand dollars, and give him a margin of five hundred dollars, meaning thereby that he should keep in the hands of this deponent five hundred dollars more than he should purchase of said Farmers and Merchants' bank bills, that this deponent would purchase said bills, and thereupon said Huntington told this deponent that he would deposite five hundred dollars with him at that time, and that on the following week he would deposite one thousand dollars with this deponent, and said Huntington further represented to this deponent that the parties (he pretending to represent other persons than himself) were raising money and that they intended to deposite a deposit of three thousand dollars, and that instead of depositing said money in the bank they would deposite the same with this deponent, and that the said parties resided in Newark, in the State of New Jersey, and that they were responsible. Said Huntington then gave to this deponent a check purporting to be signed by one William H. Clark, on a bank situated in Newark, New Jersey, and relying upon the representations of said Huntington, this deponent commenced the purchasing of said bills purporting to have been issued by the Farmers' and Merchants' Bank of Georgetown, D. C.

And this deponent further says, that he deposited said check for collection in one of the banks of the City of New York, and the same was returned to this deponent for said for want of funds.

And this deponent further says, that said Huntington afterwards redeemed said check, and induced this deponent to continue to purchase said bills by representing to this deponent that the parties issuing said bills were perfectly responsible, and were about to raise money on land and mortgage for the redemption of said bills, and that the money would be placed in the bank of this deponent, and that the Farmers' and Merchants' Bank of Georgetown, D. C., was located in Georgetown, District of Columbia, and that they had a banking house at Georgetown, D. C., and in consequence of these representations and the giving of checks on various banks, and at different times, this deponent continued to purchase said bills and returned to said Huntington about seven thousand dollars of said bills purchased by this deponent.

And this deponent further says, that on the 29th of November, 1852, said Huntington came to the office of this deponent, and gave this deponent the annexed check purporting to be signed by Wm. H. Clark, and endorsed by said Huntington, on the Farmers and Merchants' Bank at Rahway, New Jersey, for one thousand dollars, and represented to this deponent that said check was perfectly good, and that the money was in the Bank to meet it, and in consequence of said representations, as well as the representations previously made to the deponent, as hereinbefore set forth, this deponent purchased five or six hundred dollars' worth of the bills of said Farmers and Merchants' Bank, Georgetown, D. C. The said check was afterwards returned to this deponent not paid, as there was no account in the bank, and the same was pronounced as worthless.

And this deponent further says, that he has since been informed, and verily believes that said and all of said representations were false, and made with intent to defraud this deponent, and he has also been informed and very believes, that there is no such bank as the Farmers and Merchants' Bank, Georgetown, D. C., and that there is no office for the redemption of said bills at said place, and that said false notes were issued by said Charles B. Huntington, of the City of New York, Wm. H. Clark, of Newark, New Jersey, and other persons to this deponent unknown.

J. A. PATMOR.

Sworn before me, December 16th, 1852.
A. C. KINGSLAND, *Mayor.*

City and County of New York, ss.

John B. Borst, residing at Madison Avenue, first house above 25th Street, being duly sworn, deposes and says, that he is acquainted with Charles B. Huntington (now in custody at the office of the Chief of Police), and has had business transactions with him, so that he became indebted to this deponent in the amount of six hundred dollars and over. About the 20th of November, 1852, said Huntington told this deponent that if this deponent would let him have three hundred dollars more, he would pay this deponent six hundred dollars in the bills of the Farmers and Merchants' Bank of Georgetown, D. C. Thereupon this deponent asked said Huntington if said bills of the Farmers and Merchants' Bank aforesaid would be redeemed, and the said Huntington informed this deponent that they (meaning the bills aforesaid) were redeemed at No. 13 Wall-street, and that they were perfectly good, and that every dollar of the bills would be redeemed. Relying upon the representation made by said Huntington, and believing them to be *bona fide*, genuine bank bills, this deponent was induced to further loan said Huntington the sum of three hundred dollars.

And this deponent further says, that by sending a portion of said bills at a time to No. 13 Wall-street, and at different times, he succeeded in selling something over three hundred dollars' worth of the same, and the balance of the bills received from said Huntington this deponent has still remaining on hand, having been unable to get the same redeemed.

And this deponent further says that he has since been informed that there is no such bank located at Georgetown, District of Columbia, and that there is no place at Georgetown, D. C., for the redemption of said bills, and that the same are false tokens, there being no such bank as represented in real existence.

JOHN B. BORST.

Sworn before me, Dec. 17th, 1852.
A. C. KINGSLAND, *Mayor*.

Farmers and Mechanics' Bank,
Georgetown, Dec. 11th, 1852.

C. E. W. Thwing, Esq., *Cashier*,

Dear Sir,—Your favor of 10th inst., inclosing $211 of the Farmers and Merchants' Bank of this place, is received. There is no such bank here, or agency.

I return the notes.

Yours, very respectfully,
W. LAIRD, JUN.

City and County of New York, ss.

Thomas F. Baker, residing at No. 218 West 19th Street, being duly sworn, deposes and says, that he is a clerk in the employ of C. and E. W. Thwing, of No. 29 Wall street, in the city of New York, and that said firm are engaged in purchasing uncurrent bank bills, and general money brokerage business.

And this deponent further says, that the annexed letter, signed by Wm. Laird, jun., cashier of the Farmers and Mechanics' Bank, Georgetown, D. C., was received by due course of mail at the office of said C. and E W. Thwing, on the 13th of December inst., and that two hundred and eleven dollars of the bills purporting to have been issued by the Farmers and Merchants' Bank, Georgetown, D. C., were returned along with said letter to said C. and E. W. Thwing.

And this deponent further says, that said two hundred and eleven dollars were received by E. W. Thwing in the presence of this deponent, in payment of a debt due to the firm of said C. & E. W. Thwing, from Charles B. Huntington (now in custody at the office of the Chief of Police). Said Huntington told said Thwing, in the presence of this deponent, that said money would be redeemed, and that there was an office established at Georgetown, D. C, for the redemption of said bills, which representation this deponent has since been informed and verily believes is false, and that there is no such bank having any real existence.

THOMAS F. BAKER.

Sworn before me, December 17th, 1852.
A. C. KINGSLAND, *Mayor*.

City and County of New York, ss.

Horatio Freeman, residing in 124th Street, near Seventh Avenue, being duly sworn, says, about the 1st of October, 1852, Charles B. Huntington applied to me to get some persons to act as President and Cashier of the Farmers' and Merchants' Bank, Georgetown, D. C., and at the same time, he showed the blank impressions which had been struck off from the plates. I asked him, if that would not make the persons who signed the bills holden for the amount; and he said no, that it made no difference, and was done for a mere matter of form to answer the letter of the law, and that no responsibility attached to them. He told me, that he would pay me for my trouble, and that if I did, he would let me have such accommodations as I might want. I then told him I would think of it. I saw Huntington several times after that, and had conversations with him relative to the Farmers' and Merchants' Bank bills. Huntington showed me a letter signed by Gardiner, of Washington, guaranteeing the redemption of every dollar of the bills of the Farmers' and Merchants' Bank, Georgetown, D. C. I then got Mr. George H. Smith to give Huntington a power of attorney to sign his name as President of the Bank; and I gave him power of attorney to sign my name as Cashier of the Bank. I then told him that unless the money was quoted in the Bank Note List as redeemed, I would not have any thing to do with it. He told me that the bankinghouse would be at Georgetown, D. C., but that the money would be redeemed in Wall Street; and at the request of Huntington, I went to Leonori to have the bank quoted in his Bank Note List, and I told him what Huntington had told me in relation to the Bank; and its securities. Leonori seemed disinclined to quote the money; and at the request of Huntington, I offered Leonori two hundred and fifty dollars to quote the money; and I paid him two hundred dollars down in the bills of the Farmers and Merchants' Bank, Georgetown, D. C., and fifty dollars in current funds, was to be paid to him at a subsequent time. I then received from Huntington three hundred dollars in said bank bills, for which I gave him good notes, and I also received from Huntington one thousand dollars in said bills, which I was to pass away out of the States, and return current funds for the same, less five per cent. commission, which I was to receive. The bills that I did not pass, I was to return to him. I passed away about one hundred and forty dollars of said bills in this City, and all the remainder of the bills that I passed away, I paid in Canada, to the best of my knowledge

HORATIO FREEMAN.

Sworn before me December, 20, 1852.
A. C. KINGSLAND, *Mayor*.

City and County of New York, ss.

Charles B. Huntington being duly examined before the undersigned, according to law, on the annexed charge; and being informed that he was at liberty to answer, or not, all or any questions put to him, states as follows, viz.:

Q. What is your name? *A.* Charles B. Huntington.

Q. How old are you? *A.* Thirty.

Q. Where were you born? *A.* Geneva, N. Y.

Q. Where do you live? *A.* New York.

Q. What is your occupation? *A.* Note broker.

Q. Have you any thing to say, and if so, what,—relative to the charge here preferred against you?

A. I desire a more full investigation of the charge, and will then show myself innocent of any illegal action.

CHARLES B. HUNTINGTON.

Taken before me, December 17th, 1852.
A. C. KINGSLAND, *Mayor*.

ENDORSED.—The People, &c. on complaint of John A. Patmor *vs.* Charles B. Huntington. False pretences and false tokens. Dated December 16th, 1852.

A. C. KINGSLAND, *Mayor*.

Witnesses—John A. Patmor, 13 Wall-street; John B. Borst, 29 Wall-street; Thomas F. Baker, 29 Wall-street; Horatio Freeman, 124th Street and 7th Avenue; G. H. Smith, Lafayette Hall, 597 Broadway; W. MacKellar, Chief's Office; James Cram, 12th District Station House.

(197) F. R. Bail $2000.

Bill ordered by Grand Jury,—ELIAS L. SMITH, *Foreman*.

INDICTMENT

In the Georgetown Bank Affair.

City and County of New York, ss.

The Jurors of the people of the State of New York, in and for the body of the city and county of New York, upon their oath present:

That Charles B. Huntington, late of the Tenth Ward of the city of New York, in the county of New York aforesaid, being a person of an evil disposition, ill name and fame, and of dishonest conversation, and devising and intending, by unlawful ways and means, to obtain and get into his hands and possession the moneys, valuable things, goods, chattels, personal property and effects of the honest and good people of the State of New York, to maintain his idle and profligate course of life, on the tenth day of November, in the year of our Lord one thousand eight hundred and fifty-two, at the ward, city, and county aforesaid, with force and arms on the day and year last aforesaid, with intent feloniously to cheat and defraud one John A. Patmor, did then and there feloniously, unlawfully, knowingly and designedly, falsely exhibit to and pass upon him, the said John, a certain false token, to wit, a certain pretended bank note, purporting to be issued by the Farmers and Mechanics' Bank, at Georgetown, in the District of Columbia, whereof on the face of said bank note one Horatio Freeman purported to be cashier of said bank, and one G. H. Smith to be president, and did, upon exhibiting and delivering said pretended bank note, with one hundred other pretended bank notes of a similar description, falsely and knowingly and feloniously and designedly represent to him, the said John, that the bank notes aforesaid were good and genuine notes for the payment of money, and that the said bank was a solvent institution.

And the said John, then and there believing the said false pretences and representations so made as aforesaid, by the said Charles, and being deceived thereby, was induced, by reason of the false pretences and representations so made as aforesaid, to deliver, and did then and there deliver, to the said Charles a large sum of money, to wit, the sum of five hundred dollars, of the proper moneys of the said John; and the said Charles did then and there designedly receive and obtain the said sum of money of the said John, of the proper moneys of the said John, by means of the false pretences and representations aforesaid, and with intent feloniously to cheat and defraud the said John of the said sum of money.

Whereas, in truth and in fact, the said bank note, purporting to be issued by the Farmers and Mechanics' Bank, of Georgetown, in the District of Columbia, so exhibited and passed as aforesaid, was and is a false token, and whereas, in truth and in fact, the said bank note, and aforesaid other bank notes of a similar description, were not good and genuine notes for the payment of money, and whereas, in truth and in fact, the said Farmers and Mechanics' Bank was not a solvent institution, and whereas, in fact and in truth, the pretences and representations so made as aforesaid, by the said Charles B. Huntington, to the said John A. Patmor, was and were in all respects utterly false and untrue, to wit, on the day and year last aforesaid, at the ward, city, and county aforesaid. And whereas, in fact and in truth, the said Charles well knew the said pretences and representations and false token aforesaid, so by him made and delivered as aforesaid to the said John, to be utterly false and untrue at the time of making the same, and to be a false token.

And so the Jurors aforesaid, upon their oath aforesaid, do say, That the said Charles B. Huntington, by means of the false pretences and false token aforesaid, on the day and year last aforesaid, at the ward, city, and county aforesaid, feloniously, unlawfully, falsely, knowingly and designedly did receive and obtain from the said John A. Patmor the sum of five hundred dollars, of the proper moneys of the said John, with intent feloniously to cheat and defraud him of the same, against the form of the statute in such case made and provided, and against the peace of the people of the State of New York, and their dignity.

N. B. BLUNT, *District Attorney.*

Filed, 14th day of January, 1852.

Endorsed.—The People *vs.* Charles B. Huntington. Obtaining $500 by false pretences.

N. Bowditch Blunt, *District Attorney.*

A true bill,—Elias L. Smith, *Foreman.*

Mem. of Clerk.—*Received from D. A., March* 7, 1853.

RELEASE

FROM HIS CREDITORS TO CHARLES B. HUNTINGTON.

KNOW ALL MEN BY THESE PRESENTS: That we, whose names are hereunto subscribed, for and in consideration of the sum of one dollar, to us severally in hand paid by Charles B. Huntington, of the City of New York, the receipt of which is hereby acknowledged, have released, remised, and forever discharged, and by these presents, do severally for ourselves and each of our Executors, Administrators and Assigns, remise, released, and forever discharge the said Charles B. Huntington, his Heirs, Executors and Administrators, of and from all and all manner of action and actions, and causes of action, judgments, decrees, suits, debts, dues, sums of money, claims and demands, whatsoever, in law or in equity, which we respectively have ever had, or now have, or which we, or our respective legal representatives hereafter can or may have by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date hereof.

In witness whereof, we have severally set our hands and seals, this Twenty-sixth day of November, A. D. 1855.

S. CAMERON,	[L. S.]	A. B. MILLARD, Assignee of D. & J. DOKE,	[L. S.]
G. W. CORNING,	[L. S.]	FISH & ALEXANDER,	[L. S.]
AUG. L. BROWN,	[L. S.]	JOHN H. BURKE,	[L. S.]
J. & S. RANDEL,	[L. S.]	E. D. SEELY,	[L. S.]
SAM'L RANDEL,	[L. S.]	W. E. & J. SIBELL,	[L. S.]
E. W. THWING,	[L. S.]	E. W. & G. F. CHESTER,	[L. S.]
CHARLES THWING,	[L. S.]	WELLSTOOD, HANKS, HAY, & WHITING,	[L. S.]
LEVI DODGE,	[L. S.]	GEO. S. FITCH,	[L. S.]
JAMES C. GRIFFIN,	[L. S.]	J. E. KINGSLEY,	[L. S.]
ALFRED P. SERRELL,	[L. S.]	C. MOORE,	[L. S.]
WM. F. LADD,	[L. S.]	W. T. DALTON,	[L. S.]
COOK & BRO.,	[L. S.]	JOHN B. BORST,	[L. S.]
CHARLES P. CHURCH,	[L. S.]	HENRY H. GODET.	[L. S.]
BURR WAKEMAN,	[L. S.]	WILLIAM A. FOSTER,	[L. S.]
HENRY J. F. HAWS,	[L. S.]	FOSTER & VAN OSTRAND,	[L. S.]
GEO. A. SHUFELDT, JR.,	[L. S.]	ABRAM McBRIDE,	[L. S.]
W. T. SHUFELDT,	[L. S.]		
CHAS. STARR, JR. & CO,	[L. S.]		
HORATIO FREEMAN.	[L. S.]		

LIST OF JUDGMENTS

AGAINST HUNTINGTON, FOUND BY HALSEY, THE ASSIGNEE, IN HIS DESK, AFTER THE ARREST:

The words "Paid," "Settled," and "Error in Entry," being in Huntington's handwriting, and the List itself in the handwriting of another Person.

Calvin & Geo. M. Woodward,	171 79.	Paid.	Marhsall O. Roberts, President,	1089 68.	Paid.
William Sloane,	280 98.	Paid.	Charles T. Cromwell,	1098 64.	Paid.
James Laycox,	185 87.	Paid.	Ichabod L. Gage & others,	1075 16.	Paid.
William T. Shufeldt,	417 11.	Paid.	Ferdinand Holande,	709 81.	Paid.
Acker & Thompson,	436 25.	Paid.	G. W. Platt & N. C. Platt,	794 78.	Paid.
A. T. Serrell,	512 56.	Paid.	Charles C. Betts	197 25.	Paid.
Chas. & John Bussell,	60 18.	Paid.	Asa W. Welden,	816 92.	Paid.
Chas. Starr Jr. & S. C. Demarest,	840 02.	Paid.	Daniel French,	200 00.	Paid.
H. J. F. Hawes,	395 14.	Paid.	Edward D. Seeley,	4100 00.	Paid.
Levi Dodge & others,	785 17.	Paid.	Terbell, Jennings & Co.,	64 81.	Paid.
Alfred T. Serrell,	594 64.	Paid.	Henry J. Gracy,	150 00.	
Isaac Acker,	526 43.	Paid.	Beers & Bogert,	98 00.	Paid.
George T. Rodman,	607 99.	Paid.	Brown, Palmer & Dwight,	75 00.	Paid.
John Buxton, Jr.	220 50.	Paid.	Isaac Richardson,	100 00.	Paid.
W. W. Stanley & Isaac Acker,	164 43.	Paid.	H. H. Godett,	1859 00.	Paid.
W. W. Stanley & Isaac Acker,	144 09.	Paid.	Church,	300 00.	Paid.
Stephen W. Caldwell & others,	166 43.	Paid.	L. C. Ferris,	50 00.	Paid.

George S. Fitch,	2267 08.	Paid.
Elisha Peck,	195 00.	Paid.
Benedict,	45 00.	Paid.
C. R. Garrison,	3000 00.	Paid.
Jonathan Clark,	164 00.	Paid.
J. Agate,	53 00.	Paid.
Brown & Simmonds,	226 00.	Paid.
John Burke,	225 00.	Paid.
Robert J. Mann,	200 00.	Paid.
Charles A. Griffin,	500 00.	Paid.
Charles A. Griffin,	300 00.	Paid.
Henry A. Geron,	768 44.	
Halsey & Tucker,	960 62.	Paid.
Felix Duffy,	300 00.	Paid.
H. W. Hunt,	260 00.	Paid.
Berbank,	26 00.	Paid.
Otto Fullgraff,	100 00.	Paid.
Richards, Kingsland & Co.,	170 00.	Paid.
Barr Wakeman,	1100 00.	Paid.
Garrison & Fretz,	162 00.	Erased
A. T. Stewart & Co.,	488 76.	Paid.
Cook & Brother,	22 50.	Paid.
O. Site,	45 00.	Paid.
Arnold, Constable & Co.,	22 75.	Paid.
Miss Kavanah,	12 50.	Paid.
Messrs. Bissell & Dodge,	10 75.	Paid.
Charles Moore,	50 00.	Paid.
James Beck & Co.,	19 00.	Paid.
Coddington,	10 50.	Paid.
J. N. Gimbrede,	10 50.	Paid,
W. W. Rose,	7 50.	Paid.
James Moncrieff,	150 00.	Settled
William H. Ladd,	36 25.	Paid.
Boynton & Co.,	28 75.	Paid.
J. & T. Donaldson,	15 00.	Paid.
Mrs. Mulligan,	28 00.	Paid.
George T. Shufeldt,	200 00.	Paid.
Whitehead,	15 00.	Paid
Nathan Clark,	12 00.	Paid.
Isaac Andrews,		Erased.
S. Robinson,	14 00.*	
Rich & Loutrell,	12 00.*	
H. N. DeWolf,	45 00.*	
Hodges, Assignee of Wendell & Co,	69 75.*	
Jos. M. Story, Assignee of Peterson & Humphreys,	52 68.	Paid.
William T. Dalton,	400 00.	Paid.
Same,	750 00.	Paid.
Same,	200 00.	Paid.
Same,	400 00.	Paid.
Same	425 00.	Paid.
Same,	400 00.	Paid.
Same,	350 00.	Paid.
Same,	500 00.	Paid.
Same,	100 00.	Paid.
Same,	220 00.	Paid.
Same,	300 00.	
Same,		
Same,		
Same,		
Same,	50 00.	Paid.
Clinck,	825 00.	
Clinck,	750 00.	
Augustus L. Brown,	40,000 00.	Paid.
George W. Corning,	7884 45.	Paid.
William A. Foster,	4,200 00.	Paid.
James C. Griffin,	7800 00.	Paid.
John B. Borst,	3400.	Paid.
C. & E. W. Thwing	10,028 95.	Paid.
J. & S. Randel,	18,000 00.	Paid.
Dwight Bishop,	350 00.	Paid.
A. B. Millard, Assignee of D. & J. Dore,	900 00.	Paid.
Abraham M'Bride,	1,652 00.	Paid.
U. S. Life Insurance Co. receiver of Empire City Bank,	2,220 00.	
John Haring	100 00.	Paid.
Mathew W. Pleasants,	280 00.	Paid.
Fish & Alexander	65 00.	Paid.
William W. Standley,	16 00.	Paid.
J. E. Kingsley	1175 00.	Paid.
Charles E. Clarke	1000 00.	Paid.
Westwood, Hanks, Hay & Whiting	95 00.	Paid.
Samuel Cameron	2200 00.	Paid.
W. E. & J. Sibell,	196 51.	Paid.
J. F. Moyses,	488 00.	Paid.
Samuel Barry	600 00.	Paid.
H. Freeman,	250 00.	Paid.
John How,	160 00.	Paid.
J. C. Woodford,	47 00.	Paid.
Le Huray & Co.,	1600 00.	Paid.
Total,	$138,411 47.	

DEPOSITIONS

Taken on the Complaint for the Recent Forgeries.

POLICE COURT, FIRST DISTRICT.

State of New York, City and County of New York, ss.

William E. Dodge, being duly sworn, deposes and says, that he is one of the firm of Phelps, Dodge & Co., of Nos. 19 and 21 Cliff-street, importers of tin-plate, sheet iron, &c.

Deponent further says, that the promissory note now here, purporting to be drawn and endorsed by the said firm, dated July 1st, 1856, payable three months after date, for sixty-five hundred dollars, is a forgery, the same not having been signed or endorsed by deponent, or any other member of said firm, nor by any person authorized by them or either of them.

Deponent further says, that said note was, on the 8th day of October inst., presented at the office of said firm for payment, by Alvan S. Fisher, a clerk in the office of C. Belden & Co., of 60 Wall-street; but the same being immediately detected as a forgery, payment thereof was refused. Deponent thereupon proceeded to the office of said Belden & Co., and saw there Charles Belden, in whose possession the aforesaid note then was, and who exhibited the same to deponent, and likewise the other note, hereto attached, for the sum of $4916 61-100, dated Jan. 8, 1856, payable nine months after date, and purporting to be signed and endorsed by deponent's firm, and which is also a forgery. In answer to deponent's inquiry said Belden at that time declined informing deponent from whom he had obtained said notes, and

* These four erased, and after them written "error in entry."

wished deponent to wait until to-day; but while deponent was in said Belden's office, he (Belden) sent for *Charles B. Huntington*, now present, whom deponent did not at that time know; and said Belden and Huntington thereupon had a conversation together, and said Belden informed deponent that the person from whom he had obtained said notes had gone out of town and would not return until the next day.

Deponent went again to the office of said Belden this morning, and saw there the said Belden, the said Huntington being likewise present. Deponent then asked the said Belden if he was prepared to give the name of the person from whom he had obtained the said notes, to which he replied that he was not; that the person had gone out of town, and had not returned; and that deponent must keep still a few days until he could arrange it. Deponent thereupon asked Belden to let deponent see the notes, and Belden then asked the said Huntington for them, and he (Huntington) then took them out of his hat and handed them to Belden, who then gave them to deponent, who, after taking a copy of them, handed them back to Belden.

Deponent further says, that he then procured the aid of officer Bowyer, and with him saw the said Huntington, and demanded to see the said notes, who declined giving them to said officer at that time, and replied, in answer to inquiry, that he had obtained them from George S. Fitch as security for money advanced to him. Deponent then called upon said Fitch, who denied ever having seen said notes, or given them to Huntington, and upon afterwards being brought into the presence of said Huntington, reiterated said denial.

Deponent further says, that the said Belden further informed deponent that he had, within a few days past, advanced to the same parties from whom he had obtained the two aforesaid forged notes, on five other notes of the same description; and at deponent's request, and under the direction of said Belden, his (Belden's) book-keeper gave to deponent the memorandum now here (marked A), as a list or description of said notes, and, on inquiry of deponent as to what he had done with said notes, the said Belden replied that he had returned them to the party of parties.

Deponent further says, that upon an examination of the books of his firm, he finds that no such notes have been issued by said firm of which he is a member, and that the same are therefore forgeries; and that the same, as also the two first-mentioned notes, were forged, as aforesaid, with the felonious intent to defraud.

W. E. DODGE.

Sworn to before me, Oct. 9, 1856.
B. W. OSBORNE, *Police Justice.*

POLICE COURT, FIRST DISTRICT.

State of New York, City and County of New York, ss.

Charles Belden, of the firm of Belden & Co., Bankers, at No. 60 Wall street, being duly sworn, deposes and says, that, to the best of his knowledge and belief, the first time he saw the note now here, purporting to be signed and endorsed by Phelps, Dodge & Co., dated July 1, 1856, for $6,500, was yesterday, the 8th of October inst., when the same was brought to deponent by *Charles B. Huntington*, now present, and to whom deponent advanced on said note and other securities; deponent believing at the time this said note was genuine.

Deponent further says, that the other note now here, for $4,916 61, dated January 8, 1856, and purporting to be drawn and endorsed by the same firm, was received also by deponent from said Huntington, to whom deponent likewise advanced on the same with other collaterals, about a month since.

Deponent further says, that during the past month, five other notes of a similar kind, purporting to be drawn by the said firm of Phelps, Dodge & Co., amounting to $25,000, have been brought to deponent by said Huntington, and to whom deponent has advanced on them; but the same have since been delivered back to said Huntington upon his repaying to deponent the amount which had been advanced upon them; and deponent does not know where they now are, deponent having parted with them previously to his being informed that any of the aforesaid Notes had been forged.

CHARLES BELDEN.

Sworn to before me, Oct. 9, 1856.
B. W. OSBORNE, Police Justice.

POLICE COURT, FIRST DISTRICT.

State of New York, City and County of New York, ss.

George S. Fitch, of No. 130 West 13th street, Broker, being duly sworn, deposes and says, that he is acquainted with *Charles B. Huntington*, now present, and has known him about two years, being an occupant of the same office with him at one time about two years ago.

Deponent further says, that he never did at any time give the two promissory notes now here (attached to the affidavit of William E. Dodge) to the said Huntington, nor has deponent at any time had the said notes in his possession. And deponent further says, that he never saw the said two notes, or either of them, until this afternoon, when they were shown to him by officer Bowyer.

GEORGE S. FITCH.

Sworn to before me, Oct. 9th, 1856.

B. W. OSBORNE, Police Justice.

POLICE COURT, HALLS OF JUSTICE.

City and County of New York, ss.

Charles B. Huntington, being duly examined before the undersigned, according to law, on the annexed charge, and being informed that he was at liberty to answer, or not, all or any questions put to him, states as follows, viz:

Q. What is your name? *A.* Charles B. Huntington.

Q. How old are you? *A.* Thirty-four years.

Q. Where were you born? *A.* In Geneva, New York.

Q. Where do you live? *A.* No. 86 East 22d street.

Q. What is your occupation? *A.* Note Broker.

Q. Have you any thing to say,—and if so, what,—relative to the charge here preferred against you.

A. Under the advice of my counsel, I have nothing to say at present.

CHARLES B. HUNTINGTON.

Taken before me, Oct. 9th, 1856.

B. W. OSBORNE, Police Justice.

Endorsed: Oct. 9, 1856. Defendant held to bail in $20,000, to answer. Bailed by Charles Belden and William H. Harbeck.

Oct. 10th.—Surrendered by his bail, and re-committed for examination.

Bill ordered by Grand Jury. True Bill for Forgery.

City and County of New York, ss.

WILLIAM H. HALSEY, of No. 6 Wall Street, being duly sworn, deposes and says that on the 11th inst. he found in a desk in the office of Charles B. Huntington, No. 52 Wall Street, in the said city, a package of letters and papers marked on the envelope "Henry H. Barry, *private letters and papers;*" and that said envelope contained a number of letters addressed to H. H. Barry, and among them were the annexed envelopes and contents addressed to H. H. Barry; and that the same are in the handwriting of the said Charles B. Huntington, now under arrest for several charges of forgery of the name of Phelps, Dodge & Co.; and that the said memoranda hereto annexed,* to the best of deponent's knowledge and belief refer to some of the forged notes on which the said Huntington is now under arrest. Deponent further says, that said Henry H. Barry is the brother-in-law of the said Huntington; and that he (Barry) called upon deponent this morning, and inquired of him if he had any papers belonging to him, which he had left in a desk in office of said Huntington, and also stated, that they were wrapped up in paper and marked Henry H. Barry, private letters and papers; deponent replied that he had not. Whereupon said Barry asked him if he would let him have the key of the said Huntington's office, so that he might search for them. Deponent gave him the key and shortly thereafter he returned to him with the key, and said that he could not find them. Deponent further says that he verily and truly believes, from the facts herein set forth, that the said Barry was concerned with the said Huntington in the forgeries, for which he (Huntington) is now under arrest. Deponent therefore prays that the said Barry may be held to answer according to law. WM. H. HALSEY.

Sworn to before me this the 13th October, 1856,

B. W. OSBRONE, *Police Justice.*

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* As these memoranda are set forth *ante*, pp. 33 and 35, they are omitted here.

CITY AND COUNTY OF NEW YORK, ss.

HENRY H. BARRY being duly examined before the undersigned, according to law, on the annexed charge; and being informed that he was at liberty to answer or not, all or any questions put to him, states as follows, viz:

Q. What is your name? *A.* Henry H. Barry.

Q. How old are you? *A.* Twenty-five years.

Q. Where were you born? *A.* In East Haddan, Connecticut.

Q. Where do you live?

A. At the Baker House, Brooklyn. Place of business at the Artizans' Bank.

Q. What is your occupation? *A.* Check clerk in the Artizans' Bank.

Q. Have you any thing to say, and if so, what,—relative to the charge here preferred against you?

A. I deny being guilty of the charge preferred against me; but in relation to matter I make the following statement:—

I am a brother-in-law of Charles B. Huntington; he married my sister. In May 1856 I was a clerk with James Nash & Co., Lumber Dealers, at the foot of Eighteenth Street, E. R. I left their employment on or about the 10th of May 1856, at the request of Mr. Huntington, who said that he thought I could do better in Wall Street. Huntington was at that time a Note Broker in Wall Street, No. 52. I then left and went down into Wall Street and opened an office at the corner of Hanover and Wall Streets. Mr. Huntington allowed me $15 a week to live on, for the reason, that I was not doing any thing, and it was thought that I would not make any thing at first. My business was to be that of a Note Broker, selling notes. After I had been in Wall Street a week or two, I went into Huntington's office and told him that I was tired of sitting in the office doing nothing, and asked him if he could not give me something to do. He replied by telling me to return to my office and wait, and he would send me a communication, as he was then busy. Shortly afterwards, either the same or the next day, he sent me a letter. There are several notes or communications now here, all of which were received by me from him, but I cannot tell which came first, as they have no date. I think the first time he brought the communications himself, and told me to go out and buy some blank forms of notes. I did so, and on my return I filled up notes as he told me; I don't remember how many. From time to time I received communications from him to fill up notes,—those which are now here and exhibited to me, and those which I received; and I filled up the notes referred to in those communications. To the best of my belief all of these communications are in the handwriting of Mr. Huntington. (They are now here, marked on the back, Nos. 1, 2, 3, 4, 5, 6 and 7.) After I filled up the notes as directed, I delivered them to Mr. Huntington. He looked over them, and said all was right, and retained them in his possession. I identify the six promissory notes now here having my initials on the backs, as being filled up by me in my own handwriting. These notes I delivered to Mr. Huntington. I did not know the purpose for which they were to be used, and supposed them to be for a legitimate purpose. My first suspicions were aroused after Huntington's second arrest, by reading the accounts in the newspapers of the large amount of forged paper. To satisfy myself whether I had been engaged in filling up any of this forged paper, I went to Huntington's office to obtain a bundle of letters which I had left there, amongst which were the memorandums above mentioned. All my letters and papers were taken to Huntington's office, when I closed my office. I did not find the papers there then, but the papers now here are those which I was in search of. This is all that I have done, and all that I know of the matter.

HENRY H. BARRY.

Sworn before me October 16th, 1856.

B. W. OSBORNE, *Police Justice.*

Mr. Barry was discharged, but was held to bail, and gave bail as a witness against Huntington.

For a number of days following the arrest a great number of depositions were made from time to time by various parties connected with the firms and houses whose names were forged. These depositions, as furnished up to Oct. 23d, 1856, show forgeries on the following houses to the amounts set opposite the names of each respectively.

Phelps, Dodge & Co., nine notes,	$51,214 00	Bonnell, Brown, Hall & Co., two notes,	9,818 04
Terbell, Jennings & Co., one note,	6,568 00	Fenton, Lee & Co., two notes,	10,960 14
Ubedell, Pierson & Lake, three notes,	16,568 00	Teffts, Griswold & Kellogg, four notes,	27,494 18
Sackett, Belcher & Co., seven notes,	37,269 44	Many, Baldwin & Many, two notes,	8,000 00
Waldo, Barry & Co., do	34,421 42	Thos. N. Dale & Co., one note,	2,818 41
G. H. Swords, Walton & Co., four notes,	19,831 56	Tracy, Irwin & Co., four notes,	24,975 82
Claflin, Mellen & Co., eight notes,	48,280 22	Peter K. Knapp, five notes,	21,817 18
Booth & Tuttle, five notes,	19,831 53	Platt & Bro., four notes,	19,487 21
Hope, Graydon & Co., seven notes,	41,887 98	Doremus & Nixon, one note,	4,713 88
Arnold, Constable & Co., do	38,809 25	Lord, Warren, Evans & Co., one note,	5,156 00
Bliss, Briggs & Douglass, four notes,	19,167 23	Wm. Wall & Sons, one note,	5,600 00
J. Beck & Co., three notes,	15,382 18	H. J. Van Winkle & Co., five drafts,	22,850 00
Ward, Babcock & Riggs, one note,	4,696 89	Giles Babcock,	4,696 89
Graydon, Swanwick & Co, two notes,	15,000 00		

And sundry others; the total being as reported by officer Bowyer in his evidence, about - - - - -	$563,000 00
To these may be added Bishop & Co., two stock notes, -	40,000 00
Hoffman & Leonard, one check, - - - - - -	21,000 00
Grand Total, - - - - - -	$624,000 00

CHARLES L. KANE, broker, No. 33 Pine-street, was examined on the 23d of Oct. 1856, and his deposition is as follows:

POLICE COURT, FIRST DISTRICT.

State of New York, City and County of New York, ss.

Charles L. Kane, of No. 33 Pine street, being duly sworn, was examined as follows:—

Q. Have you any notes supposed to have been forged by Huntington or any one else, in your possession? *A.* I have not, to my knowledge.

Q. Did you ever see any of the notes now exhibited to you before (the notes produced, and examined by witness)?

A. To the best of my knowledge I have held notes from Huntington corresponding in name with a portion of those now here—to wit, those on Phelps, Dodge & Co.; Wm. Wall & Sons; Platt & Brothers; Doremus & Nixon; Peter K. Knapp, Booth & Tuttle; Waldo, Barry & Co.; Many, Baldwin & Many; Ubedell, Pierson & Lake; Thos. N. Dale & Co.; Bliss, Briggs & Douglas; Hope, Graydon & Co.; Claflin, Mellin & Co.; Arnold, Constable & Co.

Q. Do you recognize any of the notes now here as ever having been in your possession? *A.* I can not recognize any of them.

Q. What amount of this description of notes did you ever hold from Huntington?

A. I can not give any decisive answer. I was in the habit of loaning him large amounts, sometimes on railroad stocks, and sometimes on notes of the same name as those now here, together with others which do not appear here.

Q. These were temporary loans, were they not? *A.* They were.

Q. Can you make any estimate of the probable amount loaned to him during the past year? *A.* I could not.

Q. How much was the largest loan you made him, during the past year, at any one time? *A.* Probably $20,000; it might have been more.

Q. Have you not probably loaned him in the aggregate, during the past year, several hundred thousand dollars?

A. I could not tell the amount. It is impossible for me to do so. It might have been several hundred thousand dollars.

Q. Can you identify any of the notes as ever having been in your possession?

A. I can not.

Q. Did you ever return any notes to Huntington which had been pledged to you by him and take any other securities in their place? *A.* I have done so frequently.

Q. Did you ever suspect that any of the notes pledged by him to you were not genuine?

A. Yes; I had a note of Arnold, Constable & Co., which I took and asked them if they had such a note out, and they referred to their books and said "No."

Q. What did you do with that note? *A.* I think I gave it to Huntington.

Q. What time of the year did this occur?

A. I think it was some time in September last.

Q. Did he give you any other security for that note?

A. I don't know whether he did or not; I can't tell whether or not the loan was due when I gave it back to him. He was in the habit of exchanging securities every two or three days; sometimes twice a day, and sometimes once a week.

Q. Had you any conversation with Mr. Arnold or Mr. Constable in reference to the note? *A.* I don't know.

Q. Did you ever send to Sackett, Belcher & Co., and inquire concerning notes of theirs held by you?

A. I have sent to them to inquire whether they had two notes out for $5000 each, to which they answered that they had not.

Q. Had you those notes in your possession?

A. I think I had not. I think that the transaction occurred in this wise:—Mr. Huntington sent to me to borrow some money on some notes, among which were the above-mentioned notes of Sackett, Belcher & Co. for $5000 each. I therefore sent down to Sackett, Belcher & Co. to see if that firm had such notes out, and they said "No;" upon which I declined loaning the money.

Q. Did you receive those notes as security for loans then advanced?

A. I did not.

Q. To whom did you deliver those notes?

A. I think I did not have them in my possession; a list was sent to me.

Q. Did you not hold notes and drafts presented by Huntington within a short time past, upon which you had loaned to Huntington about $100,000; and did you not become alarmed as to some of the securities having been forged, and get him to give you railroad securities for those which you then held?

A. I held various securities from Huntington, upon which I loaned him $100,000. I don't think I then suspected that the notes were forged; but I became alarmed at the large amount due to me, and wished to have the notes changed to securities that I was sure were good.

Q. About what time was this? *A.* I think it was in September last.

Q. Was it before or after the interview with Arnold, Constable & Co.?

A. I think it was afterwards.

Q. Was it after you had communicated with Sackett, Belcher & Co.?

A. I don't recollect whether it was or not.

Q. Do you recognize any of the notes now here as any of the securities which you then held? *A.* I do not.

Q. Did he give you railroad securities for the notes?

A. He did; and other securities which were satisfactory to me.

Q. Did you make any loans to him subsequent to this changing of securities?

A. Yes.

Q. Do you now hold any forged securities that you obtained from Huntington?

A. Not that I know of.

Q. Have you any securities now with you which you obtained from Huntington, which you supposed to be forged? *A.* I have not.

Q. Have you any securities purporting to have been drawn by the parties to the notes which have here been exhibited to you? *A.* I have not.

Q. Was it or not in consequence of discovering that one of the notes held by you was forged, that you required this change of securities?

A. No; I was not aware that the note was forged. I thought there might be some mistake about it; and I wished to avail myself of securities with which I was acquainted.

Q. Did you communicate to Huntington the reply which you got from Arnold, Constable & Co.? *A.* I did not.

CHAS. I. KANE.

Sworn to before me, Oct. 23, 1856.
MICHAEL CONNOLLY, *Police Justice.*

THE BOOKS

OF THE DEFENDANTS PRODUCED BY OFFICER BOWYER, AND HALSEY, THE FIRST ASSIGNEE, UNDER SUBPŒNAS DUCES TECUM.

The books produced were few in number. There were several check-books, showing that he kept bank accounts as follows:

In the Bank of the Republic, from May 30 to arrest, with deposits amounting in the aggregate (as the cashier reports) to	$5,153,015 45
In the City Bank, from Feb. 9 to Oct. 9, 1856, with deposits amounting in the aggregate (as the cashier reports) to .	2,791,469 00
In the Park Bank, from April 16 to Sept. 25, 1856, with deposits amounting in the aggregate (as the cashier reports) to	399,020 83
And in the Artisans' Bank, from Sept. 23 to Oct. 10, 1856, with deposits amounting in the aggregate (as the cashier reports) to	76,764 80
Total	$8,420,270 08

The entries in these check-books were very loose. When the drawing of a check was entered in the margin, it seldom appeared in whose favor it was drawn, or for what account. In most cases nothing but the date and amount appear. Occasionally, however, a name is given, and in a very few instances, only, is the purpose for which a check is drawn, stated. Some idea of the rates of usury he paid may be gathered from the following entry from the City Bank check-book: "March 12, to pay interest for $1000, 10 days, $25." At this rate the interest on $1000, for one year, would be $912 50, which is nearly 100 per cent. But entries of this character are very rare. In none of these check-books were there uniform entries of deposits made, and in no case was the nature or details of the deposits stated. At regular periods, entries of aggregate deposits and footings of checks drawn are to be found in the handwriting of *Thomas*, the errand boy spoken of by Officer Bowyer. Entries of the latter description were made quite regularly by Thomas about the time of the $21,000 loan from Harbeck & Co., on the 6th of September, which loan Harbeck testifies was made on five collaterals (of which the note described in this indictment was one), and on Huntington's check on the Bank of the Republic, dated September 9th. There was money in that Bank on the 9th, out of which that check might have been paid, if presented. The entries by Thomas, on that and a few succeeding days, show that he had in the Bank of the Republic the following amounts subject to his drafts or checks, viz.:

September	9	$46,972 33
"	10	28,170 28
"	11	34,449 09
"	12	37,416 60
"	13	35,885 33
"	15	51,428 03
"	16	42,288 90
"	17	46,992 58
"	18	37,455 72
"	19	48,286 46
"	20	60,146 66

And, so on. Up to his arrest on the 9th of October, there was no day when less than $21,000 was subject to his draft in the Bank of the Republic.

In addition to the Check Books, there was a very large book with 788 pages in it. It has no lettering on the back, nor any name, title or designation, written or printed on it or in it. An account is opened on pages 1 and 2 thus: "Dr. 52 Wall Street, in account—with 52 Wall Street Cr."

The first date is March 19, 1856, and the account continues for 147 pages, to October 9th, 1856: The entries are in the handwriting of Thomas or of Barker, or of some person other than Huntington. The book seems to have been intended simply for the purpose of posting from the Check Book, the *totals* of deposits and drafts from day to day. As this posting must have been done *after* the transactions they commemorate had occurred, the utility of this book is not easily understood, for it contains no details, but simply, aggregate amounts. It could not possibly operate as an intelligible record of any dealings, either with the several banks or with third persons; nor could it serve as a guide in the drawing of checks, or to prevent over drafts. The deposits are made on a given day, and the checks of that day are drawn. Then, *afterwards*, the totals are entered in this book, and these totals of each day's transactions are thus entered in an isolated manner—lines being ruled, and one set of entries appearing to have no connection whatever with the others. It could not furnish any basis for *prospective* calculations; and the only object seems to have been the marshaling of figures for the purpose of beholding and admiring the magnitude of past transactions, a reference to which was of no possible consequence in a business point of view.

The only other account book was one which was kept in the same handwriting. It is labeled "Ledger;" it contains 569 pages: and the following is a description of the *entire contents.*

On pages 2 and 3 an account is opened with Bishop & Co., which stops on pages 4 and 5, the first entry being March 8th, 1856, and the last May 19th. There are no footings made, nor any balances struck. The aggregate of the figures on both sides of the account reaches about $400,000.

On pages 20 and 21 an account is opened with Harbeck & Co., which stops on pages 24 and 25. First entries April 24th, 1856; last entries, May 19: aggregate of figures, about $600,000; no footings; no balances struck.

On pages 30 and 31, an account is opened with C. Belden & Co., which stops on the next two pages. First entries, April 24th; last entries, May 19th; aggregate of figures, about $500,000: no footings: no balances struck.

On pages 40 and 41, an account is opened with Charles I. Kane & Co., which stops in the next two pages. First entries, April 25th: last entries, May 19th: aggregate of figures, about $500,000: no footings: no balances struck.

On pages 58 and 59, an account is opened with E. V. Houghwort, which embraces 11 items on each side: they are not footed, and no balance struck. He is charged with $13,100, and is credited with $13,800: first entry, May 23d: last entry, August 28th.

On pages 454 and 455 S. M. Johnson is charged under date of August [blank] 1856, with $35,000, and on the 15th with $8,000; on the credit side he is credited August [blank] with $25,000.

These are all the accounts opened in the "Ledger," and no other account books or entries belonging to Huntington were produced, nor does it appear that any existed, except the small memorandum books referred to by the witness Halsey. These are not of any consequence.

These accounts in the "Ledger" are made up of very naked entries: no references are made to Day Book, Journal, or any other book, memorandum or entry. Generally the entries are made thus:—On the left is a date and at the extreme right there is an amount,—the space between the two being entirely blank, except, occasionally, the words "To Cash," or "By Cash" are used. In a very few instances, the entries are a little more amplified, but scarcely enough so to render the exceptions worthy of notice. Erasures are frequent, and some of them have been begun and left partly finished, so that the amounts intended to be inserted, are not distinguishable.

There were sundry note books, and sheets of lithographic blanks for notes and drafts, found in Huntington's office, and these were produced by Officer Bowyer. They have no special interest.

AGREEMENT

RELATING TO THE REAL ESTATE AT YONKERS.

ARTICLES OF AGREEMENT made this seventeenth day of September, in the year 1856, between William W. Woodsworth, of the village and town of Yonkers, in the County of Westchester, and State of New York, of the first part, and Charles B. Huntington, of the city and county of New York, of the second part, in manner following:—The said party of the first part, in consideration of the sum of one dollar, to him in hand paid, hereby agrees to sell unto the said party of the second part, all that certain lot, piece or parcel of land, situate, lying and being in the town of Yonkers, in the county of Westchester aforesaid, on the easterly side of Riverdale avenue; bounded as follows: that is to say, bounded on the west by said Riverdale avenue; on the north by lands now, or late, of G. Rollins; on the east by lands of said Rollins, and by lands of J. Crisfield; and on the south by lands of Lispenard Stewart; containing eight 2-100 acres of land, for the sum or price of twenty-four thousand dollars, which the said party of the second part hereby agrees to pay to the said party of the first part in manner following: that is to say, by undertaking and assuming the payment of a certain mortgage, upon which there will remain unpaid the balance or sum, besides interest from February 1st, 1856, of four thousand (4,000) dollars, made and given to, and now, or lately, held by said J. Crisfield, of said lands and premises, with others, which amount is thereupon to be taken and deducted from said sum or price of $24,000, and for the payment of the balance thereof by assigning, transferring and delivering to said party of the first part, the first mortgage bonds of the Troy and Greenfield Railroad Company to the amount, at par, of twenty thousand dollars, being twenty of the nine hundred bonds of said company, for the sum of one thousand dollars each, with the interest coupons attached, secured by a mortgage of said company, bearing even date with said bonds, mortgaging all the lands, fixtures, rights, titles, interests, and franchises of said railroad company, executed and delivered to John G. Davis, J. V. C. Smith, and Paul Adams, in trust, &c., to secure the payment of said bonds with the interest thereon. And the said party of the first part, on receiving such payment at the time and in the manner abovementioned, shall, at his own proper cost and expense, execute and deliver to the said party of the second part a proper deed for the conveying and assuring to him the fee simple of said lands and premises, free from all encumbrances except said mortgage, upon which there shall then remain unpaid the said sum of four thousand dollars and interest as aforesaid, the payment whereof is to be undertaken and assumed by said party of the second part, which deed shall contain a general warranty and the usual full covenants except as aforesaid.

And it is understood and agreed that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties—

said deed to be delivered and payments and transfers made at the office of C. R. Woodworth & Co., at No. 74 Wall street, in the city of New York, on the 25th day of September instant, at 10 o'clock A.M.

In witness whereof, said parties to these presents have hereunto set their hands and seals, the day and year first above written.

W. W. WOODWORTH, [L. S.]
CHAS. B. HUNTINGTON, [L. S.]

Sealed and delivered in presence of }
A. HUTCHINS.

Received, Sept. 17, 1856 of Chas. B. Huntington, one of said bonds, in part payment on above contract. W. W. WOODWORTH.

All the names appended to the foregoing, appear to be erased.

DEED

Relating to the Real Estate at Yonkers.

It is dated Sept. 18th, 1856: William W. Woodworth and Sophia L., his wife, conveys the 8.02 acres at Yonkers' described in the foregoing agreement; subject only to the mortgage of $4,000, referred to in that agreement. The consideration expressed is $24,000. The deed is acknowledged on the 20th Sept. 1856, and was recorded in the office of the Clerk of the County of Westchester, in Liber 342 of Deeds, page 40, on the 22d of Sept. 1856.

CERTIFICATE.

Of the Clerk of Westchester County, relating to the title of the Real Estate at Yonkers, and showing that the title to this property remained in Huntington after his arrest on the 9th of October, 1856, and at the time of his assignment to Halsey on the 10th and his assignment to Bishop on the 18th of October, both of which assignments are hereafter set forth: In answer to the requisition on the Clerk to search for judgments against, and conveyances and mortgages to and from Charles B. Huntington for five years past, the clerk returned and certified as follows:

William. W. Woodworth to Charles B. Huntington.

Deed dated Sept 18th, 1856. Rec, L. 342 of Deeds, page 401, &c., Sept 22d, 1856.

Conveys 8 2-100 acres of land in the town of Yonkers. Known as Lots Nos. 16 17, 18, 19 and 20 on map entitled "Map of valuable Villa sites situated at Yonkers, on Riverdale and Franklin Avenues."

Subject to a Mortgage of $4,000 on this in connection with other property. Assumed by party of the first part.

Charles B. Huntington to William H. Halsey.

General Assignment dated October 10th, 1856, Rec. L. 342 of Conveyances page 398, &c. October 17th, 1856.

Assigns all Real and Personal Estate.

Charles B. Huntington to Ethan F. Bishop.

Genl. Assignment dated October 18th 1856, Rec. L. 241 of Conveyances, page 87 &c., October 20th, 1856.

Assigns all Real and Personal Estate.

Nothing else found,

JOHN P. JENKINS, *Clerk.*

Oct. 25th, 1856.

FIRST ASSIGNMENT.

BEING THE ONE FROM HUNTINGTON TO HALSEY.

This Indenture, made this tenth day of October, in the year one thousand, eight hundred and fifty-six, between Charles B. Huntington, of the city of New York, Broker, party of the first part, and William H. Halsey, of the same place, of the second part, Witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar, lawful money of the United States, to him in hand paid by the party of the second part, and other good considerations him thereunto moving, has assigned, conveyed, transferred, and set over, and by these presents doth assign, convey, transfer, and set over unto the said party of the second part, his heirs, executors, administrators, and assigns, all and singular the Real and Personal Estate of the said party of the first part, of which he may be seized, possessed of, or entitled unto, either at law or in equity, in possession, reversion, or remainder, To have and to hold the same with the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining unto the said party of the second part, his heirs, executors, administrators and assigns, to enter into and upon said real estate, and to take possession, convert into money, and to get in said personal estate, and to sell and convey said real estate, and out of the proceeds of said assigned premises, to pay, satisfy, and discharge all liability, indebtedness, or obligations of any name, nature, and description, that the said party of the first part may be or may become under, or subject to, or in favor of Charles Belden or Charles Belden & Co., William H. Harbeck, John H. Harbeck, or Harbeck & Co., all, or either of them, in manner and form following: that is to say, Charles Belden, and Charles Belden & Co., are to receive jointly one half of said proceeds, and said William H. Harbeck, John H. Harbeck, and Harbeck & Co., are jointly to receive one half of said proceeds, the said parties being thus paid half and half. And the said party of the first part, does hereby make, constitute, and appoint the said party of the second part, his heirs, executors, administrators, and assigns, his lawful Attorney irrevocable in and about the premises, with full power of substitution and revocation, hereby ratifying and confirming all that his said Attorney, or his substitutes, may do in the premises. And the said party of the first part for himself, his executors, administrators, and assigns, does hereby covenant to, and with the said party of the second part, his executors, administrators and assigns, to make, do, and execute all and other, and further, acts and assurances in the law, for the more effectual carrying out of the intent of these provisions, as by the said party of the second part, or his counsel learned in the law may be devised, advised, or required. In witness whereof, the parties to these presents, have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in the presence of } CHARLES B. HUNTINGTON, [L. S.]
WILLIAM H. HALSEY, [L. S.]
WILLIAM J. STOUGHTENBERG.

Acknowledged October 10th, 1856.
Recorded October 17th, 1856, in the Office of the clerk of Westchester County, in Liber 342 of Conveyances, page 398.

SECOND ASSIGNMENT.

BEING THE ONE FROM HUNTINGTON TO BISHOP.

This Indenture, made the 18th day of October, 1856, between Charles B. Huntington, of the city of New York, Broker, of the first part, and Ethan F. Bishop, one of the firm of Bishop & Co., Bankers, of 52 Wall Street, in the city of New York, of the second part. Whereas, the said party of the first part, is indebted in sundry considerable sums of money, and has become unable to pay the same with punctuality, or in full, and the said party of the first part, being insolvent, is now desirous of making a fair and equitable disposition of his property and effects, for the benefit of his creditors. Now, therefore, this Indenture witnesseth, that the said party of the first part, in consideration of the premises, and of the sum of one dollar, to him in

hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, released, assigned, transferred, and set over, and by these presents doth grant, bargain and sell, release, convey, assign, transfer, and set over unto the said party of the second part, and to his heirs, and assigns forever—All and singular, the real estate, chattels real, goods and chattels, bills, bonds, notes, stocks, scrip-book accounts, claims, demands, choses in action books of account, judgments, evidences of debt, and property of every name and nature whatsoever and wheresoever, of the said party of the first part, may be in any manner interested, either at law or in equity, in possession, reversion, or remainder. Together with all and singular, the hereditaments and appurtenances thereunto belonging, or in any manner appertaining. To have and to hold, the same and every part and parcel thereof, to the said party of the second part, his heirs, executors, administrators and assigns. In trust, nevertheless, to and for the following uses, intents and purposes, that is to say, To collect the said bills, bonds, notes, and other collectable assets as soon as possible, and without delay, by all lawful ways and means, to convert into money, all and singular the said real estate, chattels real, goods and chattels, property and effects, of the said party of the first part, and by, and with the avails thereof, to pay and discharge all the just debts and liabilities of the said party of the first part, whatsoever now existing, whether due or hereafter to become due, provided such avails shall be sufficient for that purpose, and if insufficient then to apply such avails pro-rata, share and share alike, to the payment of the same, awarding to their respective amounts, and to return the surplus of the said avails, if any there shall be, to the said party of the first part, his executors, administrators and assigns. In witness whereof, the said party of the first part, hath hereunto subscribed his name, and affixed his seal at the City of New York, the day and year first above written.

Sealed and delivered in the presence of JOHN A. BRYAN. } CHARLES B. HUNTINGTON, [L. S.]

Acknowledged October 18th, 1856.

Recorded October 20th, 1856, in the office of the Clerk of Westchester County, in Liber 341, of Conveyances, page 87.

CONFESSION OF JUDGMENT,

FROM HUNTINGTON TO BISHOP & CO.

IN THE SUPERIOR COURT OF THE CITY OF NEW YORK.

ETHAN F. BISHOP AND JOHN. W. STEWART, AGAINST CHARLES B. HUNTINGTON. } *Judgment by confession without action.*

I do hereby confess judgment herein, without action, for money due from me to the above named Ethan F. Bishop and John W. Stewart (who compose the firm of Bishop & Company), and I do hereby make, sign and verify by my oath, a statement in writing pursuant to the Statute in such case made and provided, showing the amount for which judgment may be entered herein, and authorizing the entry of judgment therefor; and (it being for money due) setting forth concisely the facts out of which it arose, and showing that the sum confessed therefor is justly due.

The amount for which judgment may be entered herein against me in favor of the above named Ethan F. Bishop and John W. Stewart is twenty-seven thousand two hundred and sixty-seven and .02 dollars; and I do hereby authorize the entry of judgment therefor against me in favor of the above named Ethan F. Bishop and John W. Stewart.

A concise statement of the facts out of which the said indebtedness arose here follows:—

On or about the 16th day of September 1856 at the City of New York, I borrowed and received from the said Bishop & Co. lent and delivered to me certain accepted drafts of which the following are descriptions, viz.

1. One dated June 3, 1856, drawn by R. B. Mason & Co. to their own order and by them endorsed in blank; and drawn on and accepted by the said Bishop & Co., and payable six months after date, for the sum of five thousand dollars. $5000 00
2. One other draft, dated, drawn, endorsed, accepted and payable in like manner for a like amount. $5000 00
3. One other draft, dated, drawn, endorsed, accepted and payable in like manner for a like amount. $5000 00
4. One other draft, dated, drawn, endorsed, accepted and payable in like manner for a like amount. $5000 00
5. One draft dated May 26, 1856, drawn by C. K. Watkins, President &c., to the order of and endorsed by, A. G. Leland, Secretary &c., and drawn on and accepted by C. E. Scofield Treasurer, and payable five months after date, for five thousand five hundred and nineteen dollars and eight cents. $5,519 08
6. One other draft dated May 29, 1856, drawn, endorsed, accepted and payable in like manner for five thousand three hundred and seventy-two dollars and seven cents. $5,372 07
7. One other draft dated June 5th, 1856, drawn, endorsed, accepted and payable in like manner for five thousand six hundred and sixty-one dollars and sixty cents. $5,661 60
8. One other draft dated June 10th, 1856, drawn, endorsed and accepted in like manner and payable eight months after date, for three thousand and ninety-seven dollars and forty cents. $3,097 40
9. One other draft dated June 20th, 1856, drawn, endorsed and accepted in like manner, and payable five months after date, for three thousand and ninety-eight dollars and nine cents. $3,098 09
10. One other draft dated, drawn, endorsed, accepted and payable in like manner for three thousand and ninety-nine dollars and eighteen cents. $3,099 18
11. One other draft dated May 10th 1856, drawn, endorsed and accepted in like manner and payable seven months after date for two thousand three hundred and twelve dollars and nineteen cents. $2,312 19
12. One other draft dated July 8th, 1856, drawn, endorsed, accepted and payable in like manner for five thousand dollars. $5,000 00
13. One other draft dated July 12th, 1856, drawn, endorsed, accepted and payable in like manner for five thousand dollars. $5,000 00

Total. $58,159 61

And in exchange and by way of security for the return of the said accepted drafts or their equivalent in money, I deposited with the said Bishop & Co. certain notes and accepted drafts of which the following are descriptions, viz.:

14. One note dated March 17th, 1856, made by George H. Swords to the order of and endorsed in blank by James Horner & Co. and made payable at the Bank of America six months after date, for five thousand five hundred and sixty-nine dollars and eighteen cents. $5,579 18
15. One other note dated July 3d, 1856, made by Thomas N. Dale & Co. to their own order and endorsed by them in blank, and made payable four months after date, for four thousand nine hundred and forty six dollars and sixty-one cents. $4,946 61
16. One other note dated July 5th, 1856, made by Sackett, Belcher & Co. to their own order and endorsed by them in blank, and made payable four months after date, for five thousand five hundred and forty-nine dollars. $5,549 00
17. One other note dated August 4th, 1856, made by Waldo Barry & Co. to their own order and endorsed by them in blank, and made payable four months after date for five thousand dollars. $5,000 00
18. One draft dated September 1st 1856, drawn by Charles Scranton & Co. of Oxford Furnace N. J. to their own order, and by them endorsed in blank, and drawn on and accepted by Phelps, Dodge & Co., and payable four months after date, for five thousand dollars. $5,000 00
19. One other draft dated September 3d, 1856, drawn, endorsed, accepted and payable in like manner, for five thousand dollars. $5,000 00

20. One other note dated May 8th 1856, made by Phelps, Dodge & Co. to their own order and endorsed by them in blank, and made payable eight months after date, for four thousand seven hundred and ninety-eight dollars and forty-three cents. $4,798 43.

21. One other note dated May 14th, 1856, made by Bremel, Brown, Hall & Co., to their own order and by them endorsed in blank, and made payable nine months after date, for four thousand four hundred and sixteen dollars and sixty-one cents. $4,416 61

22. One other note dated June 9th, 1856, made by Ubsdell, Pierson & Lake, to their own order, and by them endorsed in blank, and made payable nine months after date, for five thousand five hundred and eighty-four dollars and sixty-one cents. $5,584 61

23. One other note dated June 14th 1856, made by Terbell, Jennings & Co. to their own order, and endorsed by them in blank, and made payable eight months after date, for six thousand nine hundred and sixty-eight dollars. $6,968 00

24. One other note dated June 16th, 1856, made, endorsed and made payable in like manner, for six thousand six hundred and sixty-eight dollars. $6,668 00

Total. $59,500 44

The notes above described under the numbers 14, 15, 21 and 23, being the notes for $569 18, $4,946 61, $4,416 61, and $6,968 00, so as aforesaid deposited by me with the said Bishop & Co., were returned to me by the said Bishop & Co. on, or about the 19th day of September, 1856; and the balance of the said notes and drafts so deposited by me, namely, that which is above described under the numbers 16, 17, 18, 19, 20, 22 and 24 for the amounts respectively of $5,549 00, $5000 00, $5,000 00, $5,000 00, $4,798 43, $5,584 61 and $6,668 00 has been accounted for to me by the said Bishop & Co. The said Bishop & Co have realized nothing on account of the said note and drafts, so deposited by me, and they have returned to me all of the same, except those which they have been obliged to give up to the Police authorities of the city of New York, under certain charges of forgery brought against me, and those here excepted are above described under the numbers 16, 17, 18, 19, 20, 22, and 24, and I have received a written relinquishment from the said Bishop & Co., of all their right, title, claims and interest in, and to the same, or any part thereof, so that the said Bishop & Co. now hold no security or equivalent, for such of the accepted drafts which were so as aforesaid received by me from them, and which have been used by me and not returned as next hereinafter stated.

Of the said accepted drafts, so as aforesaid received by me from the said Bishop & Co., I have returned certain of the same to them as follows: On, or about the 19th day of September, 1856, I returned to them those above described under the numbers 4 and 10, and being respectively for the sums of $5,000 00, and $3,099 18, and on or about the 20th day of September, 1856. I returned to them that one, which is above described under the number of 5 for $5,519 08, and on or about the 24th day of September, 1856, I returned to them those above described under the numbers 6, 7, 9, and 11, being respectively for the sums of $5,372 07, $5,661 60 $3,098 09, and $2,312 19, and the balance of the said accepted drafts so as aforesaid received by me from the said Bishop & Co., I negotiated and used in business transactions with other parties, and thereupon, and thereby, I became, was, and am bound in accordance with my understanding and course of dealing with the said Bishop & Co., to account to them for the said accepted drafts so used, which accepted drafts so used by me are above described as follows:

No. 1 for	$5,000 00.
No. 2 for	5,000 00.
No. 3 for	5,000 00.
No. 8 for	3,097 40.
No. 12 for	5,000 00.
No. 13 for	5,000 00.
Total,	$28,097 40.

and I have entered upon an accounting with the said Bishop & Co. of and concerning the several matters above set forth, and they have allowed to me a fair and reasonable discount upon the said last-mentioned accepted drafts so used by me, and the amount in which I am justly chargeable on account thereof, has been ascertained and agreed upon by and between us to be the sum of twenty-seven thousand two hundred and sixty seven .02 dollars, and I have given to them in settlement my promissory note of the tenor, and to the effect following, that is to say:

New York, October 18, 1856.

$27,267 02.

On demand, I promise to pay Bishop & Co., or order, twenty-seven thousand two hundred and sixty-seven .02 dollars with interest at .07 for value received.

(Signed,) CHAS. B. HUNTINGTON.

And it is upon this obligation and on the foregoing statement of facts that this confession is given. CHAS. B. HUNTINGTON.

Dated New York, October [18 Erased.] 30, 1856.

City and County of New York, ss.

Charles B. Huntington above named, being duly sworn, doth depose and say, that the facts stated in the foregoing confession are true.

CHAS. B. HUNTINGTON.

Sworn before me, this 30th day of October, 1856.
ROBERT H. JOHNSTON, *Com. of Deeds.*

NEW YORK SUPERIOR COURT.—Ethan F. Bishop and John W. Stewart, against Charles B. Huntington. On filing the within statement and confession, it is adjudged by the Court, that the *plaintiffs* do recover against the *defendant* the sum of twenty-seven thousand two hundred and sixty-seven .02 dollars with five dollars cost. Total, $27,272 02. GEO. T. MAXWELL, *Clerk.*

THERASSON & BRYAN, *Plaintiff's Attorneys*, No. 8 Wall Street, N. Y.

Dated October 30, 1856.

Filed October 30, 1856, 3.54 P. M.

HISTORY OF THE CIVIL SUITS,

AS GATHERED FROM THE PAPERS AND PROCEEDINGS.

After Huntington's first arrest, on the 9th of October, and before his second arrest, on the day following, he executed to Halsey the assignment, dated October 10, which is above set forth. Halsey, the assignee, took possession of Huntington's office, and of his books and papers, and also of his household property, and also of his horses, carriages, and equipages, and such other property and assets as they were able to find in the general wreck.

On the 18th of October, 1856, and while Halsey was in possession under the first assignment, and making preparations for a sale of the personal property at auction, Huntington was advised by his Counsel to treat the first assignment as void, and make another which should operate for the benefit of all his creditors *equally*. He accordingly executed the assignment to Bishop, dated October 18th, and which is above set forth.

Bishop thereupon immediately brought an action in the Superior Court of the city of New-York, against Wm. H. Halsey, (the first assignee,) Charles Belden, (composing the firm of Charles Belden & Co.,) and Wm. H. Harbeck and John H. Harbeck (composing the firm of Harbeck & Co.), alleging, amongst other things, that the first assignment was made while Huntington was insolvent, and largely indebted to others; that the same was procured from him by trick and fraud on the part of Belden and the

Harbecks; and that he was in no wise indebted to any of those persons on any valid claims whatever, and it was claimed that the assignment to Halsey should be set aside and cancelled, and that all the property should be surrendered to Bishop as the *bona fide* assignee of Huntington, for the benefit of all his creditors equally.

A temporary injunction was granted, and soon afterwards a motion to make it permanent came up before the Special Term of the Superior Court for argument.

The Defendants read, in opposition to the motion, their answer to the complaint, which answer denied all actual intent to defraud, and also denied all the extrinsic facts stated in the complaint as evidence of fraud, except that there were other creditors and that Huntington was insolvent; and averred that the property which came to the hands of Halsey under the first assignment was insufficient to pay the debts due to them; but they did not state any of the facts out of which the debts alleged to be due to them from Huntington arose, so that the court could see that these claims were valid; nor were the amounts of their claims mentioned; and nothing appeared which would show whether a *surplus* after paying them could arise, except a general averment that all the property which they had been able to discover was not sufficient to pay them.

On the argument of the motion, the court intimated that Bishop, as assignee, had no standing in court in the face of the existence of the first assignment; and that even if it should appear that the first was void, it was questionable whether he was in a position to attack it, or whether any person except a judgment creditor could do so.

Bishop and his partner Stewart then procured from Huntington the confession of judgment above set forth, and immediately issued an execution which was returned unsatisfied, and they then issued another, or *alias* execution, so as to put themselves in a position to attack the first assignment not only as judgment creditors with an execution returned unsatisfied, but also as judgment creditors seeking the aid of the court in the enforcement of the *alias* execution which was then in the hands of the sheriff.

In this position, Bishop and Stewart brought an action against the same defendants and Huntington in the same court, and obtained a temporary injunction, which they moved to make permanent, and this motion was oined with the other, and the court gave a decision on both together as one motion.

Mr. Justice Bosworth presided at the special term of the court, when the motion was argued, and he delivered a written opinion which, with a statement of the case will be found in vol. 3, of *Abbott's Practice Reports*, p. 400. He decided (amongst other things), that the assignment to Halsey was absolute on its face; that it was not void on its face; that it might appear to be so after proof of extrinsic facts showing fraud; that the second assignee was not in a position to attack it, but that the judgment creditors could; and an order was made, requiring the defendants to give a bond conditioned for the return of the property or its value, in case they should not be able to sustain their assignment; and upon giving the bond, that they might go on and sell at their peril. They gave the bond, and went on with the sale, and the litigation is still pending. The validity of their alleged claims against Huntington is in issue, and should they prove to be usurious, or turn out to be the subject of copartnership dealings, it is contended by the plaintiffs, that the first assignment must fall.

For the plaintiffs, Messrs Therasson and Bryan, and Mr. James T. Brady.

For the defendants, Messrs Tracy, Powers, and Tallmadge, and Mr. William Curtis Noyes.

The case was here closed on both sides, and the court adjourned to Monday morning, Dec. 29, 1856, at 10 o'clock A. M.

Monday, Dec. 29, 1856.—Mr. Brady proceeded to sum up the case on the part of the defence.*

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* *Extract from the report of the N. Y. Daily Tribune of Dec.* 30.

"The interest in the trial of Charles B. Huntington, seems to increase as it approaches a termination. The case having been closed on Friday, the understanding that the counsel would address their arguments to the jury yesterday was sufficient to draw a very large audience at the Hall of the Court of General Sessions. At ten o'clock, the place was so crowded that the folding doors opening into the General Term Room of the Supreme Court were thrown apart, giving space for a few hundred more spectators. Among the audience were several ladies, who were accommodated with seats within the bar. During Mr. Brady's speech Hon. Sam Houston, of Texas, entered the court room, and was invited to a seat on the Bench by Judge Capron's side. Huntington walked in, in the custody of the officer, with the air of indifference that has characterized him since the commencement of the trial."

SPEECH OF MR. BRADY,

ON SUMMING UP TO THE JURY THE CASE FOR THE DEFENCE.

Gentlemen of the Jury,

I think we are unanimous in the gratification with which we now behold the termination of this tedious and protracted, though somewhat interesting, and very important trial. If I could have anticipated that it would require so much time and labor, as all parties concerned have been compelled to devote to it, I would have been very solicitous to avoid such an expenditure, and more especially at this particular season of the year; but now that I approach the close of my labors as an advocate in this cause, and look forward to the end of this trial as the incident which may forever dissociate me from important criminal trials, I see nothing to regret on our side of this case, whatever I may hereafter say about the prosecution; and in my own personal experience, notwithstanding the criticisms that have been uttered in the various places where the common talk of a large community is heard, I never before felt more gratification in standing beside an accused party to see that he had the benefit of a fair and impartial trial under the law. No possible result that could happen in this case would ever diminish the personal satisfaction afforded to me in ensuring to the defendant, as one of his counsel, the rights to which in his present condition he is entitled. I do not value the judgment, either on his transactions or my own position in this case, expressed by that portion of our community who claim an influence in public affairs equal to what they deem their exalted social standing. I began my professional life poor, and have never but in one instance seen occasion to regard highly the friendship, or the criticisms, of the class I have mentioned, in matters affecting my career. It was my design, as I candidly informed our learned opponents, that the jury to try this cause should be selected, as you have been, from that middle class of society, to which my affinities most incline me, and whose fairness and intelligence I can safely trust. I never had the slightest idea, that twelve merchants, twelve brokers, or any twelve men whose cares are constantly, if not exclusively, directed to their pecuniary interests (and I make these remarks in no offensive sense), could, despite of their habits of thought and their prejudice, take any such enlarged view of human transactions, as is required for the fearless and just disposition of this case.

Now, Gentlemen, I mean no disparagement to any particular class of our citizens. I consider general censure of any portion of mankind foolish, destitute of taste, uncalled for, unreasonable and unjust; but I say this, that if you could go out into the community, and talk to the men in what are called business circles, you would find that they contemplate the accusation against Huntington, and the disposition to be made of it, almost entirely in reference to its effects upon the world of trade. They say that if Huntington be permitted to escape from punishment, there will be no safety for business men in a city like this; as if you were here to say what was sound or unsound in trade or commerce, rather than to declare under the constitution and laws of this State, and the solemn obligation of your oaths, what should be done with the particular charge now against Huntington, upon the evidence submitted for your consideration.

Gentlemen, I will endeavor to show you, among the other propositions for which I shall contend in this case, that, for the benefit of public morals, for the promotion of public justice, and the presentation of fit example to the men who traffic in the city of New York,—if not throughout the United States of America,—the man, or the men, who, because of the transactions spread before you should be indicted, tried, and punished, are utterly different from the one now at the bar; and the exposé we have had of the iniquitous and demoralizing course of trade in certain purlieus of iniquity and vice must have satisfied every intelligent citizen, not immediately drawn within the vortex of similar pursuits, that the due administration of punishment and a vindication of the law, as to many transactions common in monetary dealings, is essential to prevent our city from becoming a by-word and a reproach among the nations of the earth. If upon your judgments and consciences you declare that these good results may in part, or in whole be accomplished even by the sacrifice of the accused, so that the sacrifice be made in accordance with the ceremonies and solemnities which the Constitution and law require, let punishment fall upon him from your hands.

Huntington stands charged under twenty-seven different indictments. I do not remember a case in which accusations so numerous, have ever before been preferred in this city against any individual. I do not mention this in the way of censure or complaint. Far from it. If the learned District Attorney had not, in view of public feeling, procured a great number of indictments against Mr. Huntington, such comments as we have read in the papers, before and since this trial, and such unjust insinuations against the District Attorney as have appeared in the public prints during the same period, would have been multiplied in number and intensified in degree of malice and rancor.

On coming into court this morning, my associate (Mr. Bryan)

handed me a copy of the *New York Daily Times* of this date, a journal which issues I don't know how many thousands of copies daily, delivered wet and reeking at the mansions of the rich and the habitations of the humble—finding their way into the hands of all classes, and no doubt reaching, as I hope they have, the eyes and understanding of this Jury.

You will bear witness, Gentlemen, that it was my desire, and I expressed it—although with great deference to the injunction which the Court always gives against the Jury reading newspapers during the trial—that you should notice every thing emanating from the press in ragard to this case. When I allude to these topics, you must excuse me. You must not think that I am wasting your time; because it is impossible to deny the fact that, in this country, "public opinion," as it is called, takes the place of the sovereign or the despot under the governments of the old world, and undertakes to thrust itself into courts of justice, to direct, defy, and even trample upon the Constitution, the law, and the right.

Look at the administration of the law in Great Britain. Ordinarily, when the flow of justice there is uninterrupted by some great political excitement affecting the crime, nothing can be more fair, nothing more learned, and nothing, as a general thing, more just. I speak now in reference to the improvements that have been made there within the last few years. But it was not so before; and when the learned counsel for the prosecution have referred, and will again refer, to some of the state trials in England, I ask you, Gentlemen, to remember, that it is but within a short period that, in the administration of justice in that country, the prisoner's counsel has been permitted to say one word in his behalf to the Jury; the theory being, that the Judge and the Attorney General were advocates for the accused. Gentlemen, you can imagine what efficient counsel the prisoner had in political prosecutions, when the crown officers and the crown judge were responsible to the will of the monarch whose purpose it was, if not their office, to subserve. Here we have no sovereign unit, no single despot. We have no individual will or power, which may control either judge or jury; but we have something capable of being equally dangerous. We have that movement of the multitude, outside a court of justice, which sometimes places the dearest rights of the most innocent man in danger. That is not so in this case, Gentlemen; for I feel convinced that if I were able to poll the public sentiment of the great mass of men upon this Island, they would say there was no moral propriety or justice in the conviction of this accused. But this thing called public opinion, as it is administered to us through the press,—if the press be regarded as its legitimate organ,—is engaged in something which the press declares to be entirely correct, but in which, for the life of me, I am incapable of seeing the least propriety.

I give the gentlemen who conduct the public journals of this city, credit for being actuated by honest motives, and seeking to attain laudable ends. I would not say any thing to the contrary, for I never make an aspersion upon any one without facts to justify it. But I think that in their way of seeking the public benefit, the editors pursue a very strange course in criminal cases of magnitude. If one of you, Gentlemen, had a civil suit, involving the value of a horse worth perhaps $100, how would it strike you if one of the public journals, during that trial, presented a series of comments upon the case, and undertook to say how the jury should find their verdict? Why, there is not a just man alive, whose moral nature is not perverted by disease or otherwise, that would not censure such conduct. Supposing in a criminal case, that one of you, Gentlemen (and you must excuse me for being thus personal), should be indicted,—as has often occurred to men of unimpeachable integrity,—and placed upon trial would you not consider it very unjust, if, in addition to the intellectual power of the prosecution, the law of the land, and the evidence against you, that you should have to meet and combat with the remarks of the press, intimating to the jury investigating the complaint, the result at which they should arrive? What is the object of these publications? What is the object of commenting upon this case? What is the object of telling us what this jury ought to do? To FRIGHTEN YOU, GENTLEMEN! Simply and exclusively to frighten you,—to make you feel that if you should render a verdict of not guilty in this case, when you returned again to the community you, as jurors, might find yourselves paraded in the newspapers, and censure applied to you individually. Well now, Gentlemen, I believe that moral courage is the rarest quality found among mankind; and I imagine that some of the most signal and brilliant illustrations of this quality presented in history, have been afforded by juries, both in this country and England. If it were not aside from the particular objects of this case, and if it would not fritter away valuable time, I could adduce many instances to substantiate my proposition. I could show you, among many other cases, one where a jury returned into court with a verdict of "not guilty," three several times, which not suiting the taste of the corrupta nd dastardly scoundrel sitting on the bench, he refused to receive it; but nevertheless they persisted, so that the innocence of the accused was vindicated, and the law of the land preserved. The jury, however, were sent to the Tower and imprisoned, and some of them died there. Gentlemen, I have seen an instance of this here in the noble city of my birth. I have been ruined as often as any man of my age upon this Island (laughter). I never was engaged in any important criminal case, that some patronizing, sagacious, prudent, lofty individuals did not suggest, that "Brady was certainly going to ruin himself." (Renewed laughter.) Now,

it is of but little or no consequence to this community, or to those individuals, whether I be ruined or not; but such was the lamentation of men, who, afterwards, have been compelled to admit that it was fortunate for the eternal law of God, and for right and justice between man and man, that an acquittal occurred. But, Gentlemen, any man who does not feel that the moment when my profession attains the greatest dignity is when it stands up for individual right against the prejudices and clamor of the whole world, does not appreciate its high offices and value. At the trial of the Negro riots in this city, when the bar was constituted of a close monopoly, and only a certain number were permitted to practice, not a single lawyer could be found,—and this is the most damning stain upon the history of our profession throughout the world,—who would undertake the defence of the men subsequently proved to be innocent. And, Gentlemen of the Jury, if malice, if prejudice, if the desire to work your ruin should assail you through the medium of a Grand Jury, and you should find public opinion as uttered in the press, demanding your sacrifice, almost without the forms of law, what would you think of the advocate who, under the circumstances, would not feel that the obligation to stand by you and see that you had the benefit of a legal trial, was greater than if public sentiment was in your favor, and you were surrounded by faithful friends and powerful influence? Would you not scorn and despise him, who refused you the benefit of his aid in your utmost hour of need? It is plainly wrong and unjust, that the gentlemen who control that mighty organ, THE PRESS, should use it against Huntington and his counsel, who cannot meet them upon an equal field,—for we have no newspaper to hurl back these attacks. I complain that it is unjust to do what the *New York Daily Times* has done, in saying, "If, indeed, the community listens without laughter and indignation to such wretched perversions of common sense as are attempted to be palmed off upon it, it may be set down as mad."

"*The community!*" "THE COMMUNITY!!" Why, they write as though the community were engaged in trying this cause, instead of you, Gentlemen of the Jury, selected for being impartial and intelligent, and desirous to be just. "THE COMMUNITY!" I feel respect for public opinion, without which, a man cannot possibly deserve familiar intercourse with his fellow-men,—I respect public opinion when it is the deliberate conclusion of an intelligent majority upon any matter of public or private concern; but for the seething ebullitions of the mob, rising up on the occasion of sudden impulse and excitement, controlled by no reason, assisted by no deliberation, and characterized by no justice, I have no feeling but the most unbounded and illimitable contempt; and, whether I find myself buoyed aloft on the rolling billows of that popular tide or hurled by its fury upon the sands, I entertain no respect for it in the one case or the other.

Now, Gentlemen of the Jury, this remark of the *Times* is a conclusion of something relating to the testimony of Drs. Parker and Gilman. It says:

"As journalists, we cannot have a better opportunity to 'stick a few principles' into the public than at present, while the public mouth is agape with the marvelous preparations of Drs. Gilman and Parker, labeled 'moral insanity.'"

Well, this is a flippant way for the editor of a newspaper to dispose of the personal character, and the reputation, of two men eminent and learned in their profession. I do not suppose that the gentleman who wrote that article would consider it otherwise than in the worst possible taste, and more than that, exceedingly unjust, to assail the reputation of Drs. Parker and Gilman out of his own journal, and by language in reference to a subject about which he had not fully acquainted himself, and I can characterize such flippant language, thus applied to two witnesses of eminence and worth, in no other way than as foolish, wicked, and inexcusable. I suppose, Gentlemen, that some would have taken great pains to conceal from you the publication of this morning; but I prefer to tell you that the thing put forward here is the last of many efforts on the part of a leading journal to do what I call a great wrong to this case. I shall refer to this subject no more. I thought it necessary and proper to do so now, and before I advanced one step in the details of this case, as it will be presented on all the proof.

I come back to these twenty-seven indictments against Huntington. We asked our learned friends to specify upon which of these they would try him first. They selected three, and of those three particularly preferred to try that which charges an intent to defraud Wm. H. Harbeck. They made the selection deliberately, and against our remonstrance. We desired them to try the indictment which alleged an intent to defraud Belden. You know the prosecution would not consent to this, but determined to cling to the Harbeck indictment; and if it prove to be rotten—if after trusting themselves upon the stormy ocean with such a light spar in their hands, it does not buoy them up, but they go down into the dark waters never to rise again it is the result of their own preference. They would have the Harbeck indictment, and nothing else. It comes into Court in a worse condition than Banquo's ghost, with more scars upon it and more mortal wounds. Of these three indictments I have mentioned,—one charges an intent to defraud Belden, another to defraud Bishop, and the third, with which we have now alone to deal, an intent to defraud Harbeck. Why they would not try the Belden indictment is so perfectly transparent to this Jury now, or will become so clear during the course of this discussion, that I need not stop either to consider the point or to say one word about it.

Well, then, Gentlemen, the indictment charges, that at a cer-

tain time Mr. Huntington forged a certain note, dated July 1st, 1856, at four months, for $6,500, purporting to be drawn by Phelps, Dodge & Co., and payable to their own order,—that he did "falsely make, forge, and counterfeit" that note with an intent to injure and defraud William H. Harbeck, and divers other persons to the jurors unknown. That is the specific charge which this Jury have now to dispose of. The statute which my learned friend refers to, is this:

"Every person who *with intent to injure or defraud*, shall falsely make, alter, forge, or counterfeit any instrument or writing being or purporting to be the act of another, by which any pecuniary damage or obligation shall be, or shall purport to be, created, increased, discharged, or diminished, or by which any rights or property whatever shall be, or purport to be, conveyed, discharged, diminished, or in any manner affected, the punishment of which is not hereinbefore prescribed, by which false making, forging, altering, or counterfeiting any person may be affected, bound, or in any way injured in his person or property, shall be adjudged guilty of forgery in the third degree."

All this, Gentlemen, you will perceive, presents as the chief characteristic of the offense,—*the intent to defraud;* about which a great deal must be said on both sides, and also by the Court, before you retire.

Now, the first fact that must strike you in reference to these numerous indictments is, that not a single man whose name is said to have been forged has ever been, in any way, prejudiced by the act. That is very remarkable. If there be in the bookt a case which at all resembles the one you are now trying, my learned friends on the other side, with the great industry and search that characterize them, will, I have no doubt, point is out. When I said before that it would prove to be different from any forgery case tried in this country, if not in the world, I said something which has been verified by the developments of this trial. Is it not very strange that a man should be detected, as they say, in forgeries to the amount of over $500,000, through the activity of Mr. Bowyer, one of the most efficient and reliable detectives connected with the police of the city, and that of all that large amount of forgeries, there should not be a single instance in which any person was injured whose name was written to the spurious paper? Is not that strange—strange, that if any intent to defraud existed, or if any fraud was actually done, it related exclusively to some person or persons in whose hands that paper was deposited as collateral security? I have heard of no person who received any of the paper excepting Belden, Harbeck, and Bishop. If there were any other person, the fact is not developed in proof; and I mean to discuss the case upon the evidence it contains, and upon nothing else. Now, as to Bishop, he never had any intent or wish that Mr. Huntington should be prosecuted, and I take it for granted that on the charge as to Bishop, the accused will never be tried. How far this assump-

tion is true or false let forthcoming events determine. So that I find it is Belden and Harbeck alone who are moving this prosecution against Huntington; and it is as clear as any ray of intelligence which falls upon the mind,—clear as the blessed daylight in which we now live and rejoice, that if Huntington ever did in fact designedly corrupt to any extent the morals of this community,—if Huntington ever in fact displayed himself like a meteoric if not a poisonous exhalation of society, dazzling by a splendor as transient as it was meretricious,—if Huntington were able to whirl through Broadway in his magnificent carriage, drawn by steeds that would adorn the cortege of an emperor, and to bespatter with mud the toiling mechanic or the poor sewing woman, drudging with her needle from early dawn to the night, and all other sons and daughters of toil, who gazed with wonder upon this splendid success, achieved upon what they could not imagine,— if this foul spectacle has indeed been presented, to whom on the footstool of Heaven is all this attributable except to Belden and the Harbecks, and to them alone?

I said, Gentlemen, that this was an extraordinary case. How and to what extent its peculiarity bears upon what you have to do, will appear presently in a more legitimate and more logical connection. Has any one of the gentlemen whose names have been forged exhibited himself either in the police office or here, claiming that he has been injured, and insisting that Huntington should be made an example for the benefit of the community, if not of the country in which we live? Not one, so far as I have discovered any thing in the evidence of this case; and therefore the indictment which the Jury are now trying grows only out of an egealld attempt to defraud Harbeck, who is either, as they will contend on the other side, the victim of black-hearted ingratitude or of his own folly. Gentlemen, it is with deep regret in discharge of my duty to the accused that I shall be compelled to speak of Harbeck in severe terms; but, Gentlemen, during all my experience in courts of justice (and it has not been small) I never witnessed a spectacle which, for the extent of its turpitude and the illimitable reach of its audacity, would at all compare with the effrontery of Harbeck, as he stood on that stand giving a narrative of the transactions that occurred between him and Huntington. When I come to contend, as I will, upon the law of the land and upon the proofs in this case, that this Jury are bound to disbelieve every word that he uttered, I would like to know what becomes of this prosecution, and what becomes of the forgery and of the intent to defraud? I am sorry for this; but if what I say on the subject proves to be just, then, Gentlemen, your approval, not alone as jurors by your verdict, but as men who have witnessed the conduct of all the Counsel in this case and heard the evidence, would be more gratifying to me outside of this court-room than the *unthinking* praise of millions.

Here is Huntington, a young man born, about 35 years ago, in the quiet and beautiful village of Geneva, upon one of those beautiful lakes that show like gems in the landscape of this noble State. He was brought up by a father, who has been upon the stand before you, whose appearance, intellect and manners instantly commanded the respect of all who saw him there, and whose clear intellect, and most felicitous use of language, made his testimony what I declare to be unsurpassed by any ever heard, either from learned or unlearned man. Huntington was born of such a mother as would be a suitable companion for that highly respectable old gentleman, now in his seventy-sixth year. The accused leaves his home and arrives in this city in 1848. During that year he is exceedingly poor, so much so that Mr. Clarke, who has been examined here, advances him from time to time $1200, and Huntington's wife is obliged to return to her friends that they may support her. His condition alters but little from 1848 to 1851. He had already failed in the furniture business in Hudson street, and made an assignment to Mr. Randel, which yielded a very small dividend to the creditors. He had neither property nor credit, nor the means of acquiring one or the other. In 1851 he is a little improved in his pecuniary circumstances. In 1852 we find him engaged in the perpetration of various forgeries, a number of which have been proved in the course of this trial, and also in an experiment to get up a bank, a transaction to be alluded to briefly in another connection. In 1852 he is indicted during the administration of our late friend and brother in the profession, Nath'l B. Blunt. That indictment was never brought to trial; indeed, there was no plea ever interposed to it, but it was put away in that mysterious pigeon-hole which my learned associate (Mr. Bryan) referred to so accurately and well in the opening of this case. Nothing has been heard of it from that time to this. But it was a matter of public concern, Gentlemen,—it was a matter of public knowledge; and the first great fact that we have, to attest the shrewdness, the sagacity, and morality of Wall street is, that a man thus indicted in 1852, the perpetrator of several known forgeries, who had shortly before proved to be a bankrupt, and had made an assignment, who had no property and no credit, very soon afterwards presents himself in that great highway of interest, in that great mart where the shrewdest intelligences of the city of New York assemble, and there becomes a species of king, a magnate, one of the shining lights among those who think—and most of our people seem to concur in the idea—that as we can not exhibit a noble aristocracy in this country founded upon high lineage or illustrious achievement, all that we require to obtain position or rank equivalent to that of the aristocracy in the olden time, and the spurious nobility of the new, is to have splendid dwellings, furnished with such

magnificent trapping as decorate our steamboats and our eating-houses equally with the salons of Fifth avenue palaces. Well, Gentlemen, 1852 is the period when Huntington has pressed upon him the stamp of an indictment, and is sent down into Wall street to be engaged in transactions to the extent of millions. Then 1853 comes. He goes to California, and remains there until 1854; and, so far as I know, all that he gained from his extended stay there, was one single project, which my learned friend (Mr. Noyes) will call a very sane and reasonable one, and suitable even for Wall street—a project for establishing a Joint Stock Company to wash the dirty linen of the throngs who travel over the Isthmus. (Laughter.) I do not discover that he got out of California any thing but that. Well, he comes back a man with one idea, and upon this he believed he was destined to build a great fortune.

Mr. Noyes: That was before he went to California.t

Mr. Brady: Well, all the worse for you, because hen he had this notion before, and went to California to realize the practicability of it; and if he did not get that there, he got nothing. He had not even one idea,—not a dollar of profit, nor a single item of experience. In 1854 he returns. In October, 1855, he re-appears in Wall street, and makes the acquaintance of Mr. Harbeck. In January and February, 1856, his loans are comparatively very small, but towards the month of April they began to be very considerable. In 1856, therefore, on the 1st of January, he was in Wall street, having so shortly before been bankrupt in means and in reputation, and the unsuccessful deviser of various schemes of speculation, not one of which has resulted in any thing but ruin. He has been taken possession of by Bleden and the Harbecks, and, the first thing we know, is boasting of a capital of $150,000, to which shortly afterwards he added (as he said) another $200,000. His business, as he tells us, "is established upon a firm and solid basis;" he seems to think that the "ROCK OF AGES" is under him, that no misfortune or adversity can shake his prosperity; and from that time until the 9th of October following, he goes on in a career of extravagance and folly unsurpassed and unapproached in the history of our country. On the 9th of October, 1856, he is arrested for one of these forgeries. He is liberated on bail, under circumstances to which I shall refer in a moment, and on the following day re-arrested and placed in prison. Then the myriad-tongued presses of this city labor with statements and disclosures about his case, and his mode of living, and with every species of speculative conjecture.

After this trial had commenced, I called the attention of the Jury to some publications which I will not read at large,—one of them in the "*Times*," and another in the "*Herald*." I do not much complain of that in the "*Herald*," for you may remember

that as it merely gave its *opinion* as to how this case should result, I would not say any thing more about the matter at that time. From that period to this it seems to me that the gentlemen of the press have been more considerate than usual in cases of this character, with the exception of the article in the "*Times*" of this morning. I would not refer to this article in the "*Herald*" at all, except for a personal purpose, which will take but a moment, and I trust that you, Gentlemen, the Court, and the learned Counsel, will excuse my alluding to it. I want to show how exceedingly accurate our journals are upon every subject. The "*Herald*" says:

"In saying this we feel satisfied that we are not overstepping the bounds of courtesy which courts are used to claim from newspapers. Mr. Brady is very good in instructing us on the point. It happens that we made ourselves practically acquainted with the rights of the press with regard to pending cases at a time when Mr. Brady's chief concern may have been about sugar plums and toys. Nor do we feel now that the ripe warnings of this promising young lawyer, or the judicial admonition of Judge Capron are in any way necessary to keep us in the right path."

Now, certainly, I do not undertake to prescribe to these gentlemen how they shall transact their business. I said, that if any one supposed that the time would ever come when the press would abstain from comments upon a criminal cause during its pendency, he would delude himself; and all I asked was that they should be correct in their statements of facts. Now, I acknowledge my gratitude to the editor of that paper. He proves to be the successful Ponce de Leon, who in New Florida actually discovered the fountain of perpetual youth. He plunged me into it, so that I became a boy again; and thank the Lord of Heaven, if even for a moment I be permitted to indulge the feeling that I am thus rejuvenated. I thought I was upon the border line of life—not very young nor very old; but to be told that I am "a promising young lawyer" upon such high authority, makes me return my sincere thanks to the editor of the *Herald;* and should I meet him, I will be glad to say that my hopes as a bachelor have been increased by his statement to an incalculable degree.

Gentlemen, I have presented to you an outline of this case down to the time of the arrest of Huntington. Is this the history of a wicked criminal? I beg your earnest attention to the thoughts, if they be of any value, that I shall express in this connection, however unworthy of regard the language may be. Does this disclose the history of a criminal? Why, says my learned friend, forgery is one of the most heinous offenses that can be committed in any community. Gentlemen! under the old common law of England it was only a misdemeanor, punishable by a slight imprisonment; but when commerce extended among the inhabitants of the British Islands, and every thing of personal property began to receive a peculiar value in their estimation, then even forgery became so serious an

offense that criminals were punished by slitting and burning their nostrils, cutting off both or one of their ears, forfeiting all their property, and adjudging them to perpetual banishment. That was before the enlightened labors of such philanthropists as Sir Samuel Romilly had discouraged the propriety of applying such rigorous punishments in criminal cases. At one time in England, Dr. Dodd, Fauntleroy, and others, suffered for this crime on the scaffold; and the last instance of such an execution occurring was, I think, in the person of a man named Hayward, in 1829. My friend told you that forgery was a species of lying—the meanest kind of commercial lying. I thank the learned gentleman for that statement, the correctness of which I do not mean to dispute, as it may aid me presently in giving a name to the *mania* which we claim to be proved in this case, and for which it is said that no baptism has ever been acknowledged in any medical or scientific book. Forgery, as a crime, is usually committed thus:—a man counterfeits money or forges a check, and hands it to some person to take it for him to the bank, present it, and get the money. The man who forges a check very frequently sends a boy, or a woman sometimes, who procures the money upon it and hands it over to him. He conceals himself, and escapes when a favorable opportunity is afforded. It is done secretly and stealthily, so as to conceal all guilt, and defeat the means of punishment. There are other instances where a man forges the paper himself—himself delivers it, and obtains credit or property upon such paper; but in all such cases you will find, wherever the man is sane (and I know of no exception) the act is accomplished with circumstances which justify the belief, on the part of the forger, that his crime if it be one, can neither be detected nor punished. But, Gentlemen, there is always secrecy attending it. I think that if any one of you, not sitting here, were told that a man went with a forged instrument, which he knew to be forged, the body of it being filled up in his own handwriting, to a person whom he knew well, and handed it to him, and obtained money upon it, knowing well that the very instant the note matured his offense would be discovered, and yet remained in the city all the time, subject to a call from you,—you would say it was a most extraordinary piece of conduct. Would you not? What kind of man would you take him to be who perpetrated such an act under such circumstances? What kind of man is he who has $500,000 of forgeries out in this community, knows that the police officers are in full chase of him, he is arrested on the 9th of October, let out on bail, goes back to his place of business on the morning of the 10th of October, and remains there to be re-arrested, giving no particular instructions, and making no disposition of his affairs at all, except a certain assignment for the benefit of Belden and Harbeck, to which more particular reference will be presently made? What kind of man

would anybody say that was? Why, Gentlemen, one of the great objects of punishment in criminal cases is what? The reformation of the delinquent. Is it not so? If you do not design to accomplish any such end as that, the laws that govern society must be wrong. If the means that you adopt for the punishment of crime do not tend to such a result, they must be unwise. I had supposed that that was one great object of human law makers, and those who wisely administer the law have come to that conclusion. Certainly the writers on medical jurisprudence claim that that is the most benign and useful object of punishment in criminal cases. Of what moment is it to you, or to me, to have such an expensive scheme for the administration of the criminal law, if no such result can be effected? No advantage except one, and that is, where the criminal is dangerous, to exclude him from society; but then it will only be for a time under our system of laws, and not for all his life, except in a very few cases of very great enormity.

Whether Huntington is a person disclosed upon this evidence to be the fit object of criminal punishment, is one of the questions which you, in the calm, honest, unprejudiced, and fearless discharge of your duties, will have to consider and determine. Well, they say that Huntington is just such a man, and they claim that they can prove, and have proved it. Let us see what is necessary to be established to justify any such belief. In the first place, they must show that this instrument was forged, or being forged was uttered, by Huntington. Further, that he had a guilty knowledge that it was a forgery at the time of its uttering; and again, that he acted with an intent to defraud. If they fail upon either of those points, then the prosecution is not sustained, by reason of its own inherent weakness. One of my propositions will be, that, upon all the proof offered by the prosecution, they have failed to make out a case. Forging and uttering with a guilty knowledge, and with intent to defraud, are the great elements to be established, before a hair on the head of Huntington can be harmed, or his liberty interfered with by Jury or Court. Now, as to the forgery, they have examined Mr. Barry and others. They have examined Barry, to prove a most extraordinary state of facts, which I wish you, Gentlemen, to consider in this connection, both as bearing upon the general question of guilt, and upon the character of Huntington's organization and mind. What is it? He married the sister of Barry in 1849; Barry was a young man employed at a salary he did not consider sufficient, and wanted some new situation; he mentioned this to Huntington; Huntington paid him $15 a week from the 10th of May, 1856, to August following, and agreed to do so until Barry could procure some employment in an office, which he (Barry) hired, until the 1st of May then following. Barry found nothing particular to engage him in his office, and became tired of inactiv-

ity. In the month of July he went to Huntington and told him that he wanted something to do, and thereupon Huntington adopts this very extraordinary method of employing him: "I will give you something to do," says Huntington, and sends him a memorandum in his own handwriting, entirely undisguised, which is as follows:—

"July 1st, 3 Months, $6,500.
" 1st, 3 Months, $6,500.
" 1st, 4 Months, $6,500.
" 1st, 4 Months, $6,500. Value received of Minnesota Mining Company. We promise to pay to our own order."

There is a written instruction in Huntington's ordinary handwriting, to prepare the four spurious notes, which have been produced upon this trial by the prosecution, purporting to bear the signature of Phelps, Dodge & Co. It was an open request from Huntington to Barry, to prepare notes that forged names might be put at the bottom of them. These are presented here by the prosecution in the month of December, though written in the month of July previous, as conclusive evidence of what? Why, conclusive evidence that when Barry made those notes, he acted as the agent of Huntington; and conclusive evidence of the other fact, that Huntington, having those notes made, and they not being traced into the hands of other persons, when they went to Huntington, you must presume that the forged names were written by him. Take that to be so. How does it strike you that a man making this open request in writing, should take no earthly means, even after he was arrested on the charge of forgery, to put that paper out of existence, so that it could not reach the hands of the prosecution? How do you account for that upon any known principle of human conduct? We will presently speak, Gentlemen, of brain, and of mind, which is the function of brain. I am not about to discuss any spiritual questions, or any thing regarding religion when I approach that subject. I do not want to have it appear that there is any thing tending to materialism, when I say that mind is a function of the brain,—is a development of the brain,—I speak that which is in physiological, and in all practical language perfectly correct. I ask you who understand what we call "mind," by what rule of conduct, applicable to any ordinary man, do you explain these circumstances? I will not put the present case as an illustration, but I will suppose a man, not of shrewdness but of ordinary intelligence, desirous of committing forgeries. He wants a young man to fill up notes, that he may forge names at the bottom of them. Is it not in the first place extraordinary, that he should write a direction to that effect to be sent but half a block, perhaps 150 feet, to Barry to fill up the notes, when he might go into that office and say so without the necessity of leaving

any written evidence of his guilt? What kind of a man is that, I ask you? Do you suppose that a sane man, or one in possession of ordinary intelligence would do that? Would he commit the folly of writing that piece of paper when there was no necessity for it? Mr. Barry tells us expressly, for I asked him the question, again and again, to rivet the circumstance in proof, that Huntington never gave him any hint, or suggestion, or direction, or intimation about these papers,—never told him to destroy or secrete them,—so that at the time any development occurred, as might well happen, there should not be this flagrant and palpable proof against him.

Then comes another order of a similar kind.

Make me six Notes of $5,000 each, payable to the order of the drawer, dated July 1, 2, 3, 4, 5, 6, at four months. Payable at the Bank of Commerce. Get a nicer note than the last.

And here is another.

Fill me up four Notes of $5,000, dated July 1, 2, 5, 7, at 4 months, payable to *our* own order, at Mercantile Bank.

C. B. H.

Here is still another.

Get 4 Notes, and fill them up nicely.

C. B. H."

And again: still another.

April	1st,	4 mo.	$6,250 00.
"	"	5 mo.	6,250 00.
"	"	6 mo.	6,250 00.
"	"	6 mo.	6,250 00.

Order of ouselves, value received of Minnesota Mining Co.

Then we have the envelopes containing these directions. Did you ever hear, did you ever dream, did you ever read,—did you ever speculate on a man's beginning to commit forgery in that way? He who thinks that he has the capacity to forge, believes that he has the capacity to imitate handwritings and disguise his own. We have proof that Huntington wrote in various hands. Why did he want Barry to make these notes, when he could have himself disguised his hand in the body of the note just as well as in the spurious signature? What kind of man is he, who, intending to commit forgery, *needlessly* makes a confidant of another, and in addition, leaves that confidant in possession of the evidences of his crime, without any instructions to destroy them, so that they are liable to come up in judgment against him. I confess, Gentlemen, that these facts have startled me, who have seen something of criminal trials. When I was a boy in a lawyer's office, I was accustomed to sit in the Court of Sessions, and witness the brilliant displays of advocates who then stood pre-eminent at this bar in criminal trials, and "there were giants in those days." I witnessed the power of him who received more censure in his lifetime, for a fearless and noble act of professional

duty, than was ever visited upon any other amongst those who have deserved the great advocate's fame. The effulgent light of his genius has left us forever and we are in shadow from the resulting gloom. I witnessed the first forensic efforts of David Graham, and, during the long career of his brilliant triumphs, founded upon an honest discharge of all the duties which marked his professional and personal career. I never, in my early nor my late experiences heard or read of a case in which a man intending to commit forgery sat down and wrote out an instruction to some other person, to prepare the body of an instrument which he was to forge, and then left that order in the possession of him upon whom it was drawn, just as you would leave a check in a bank, or an order for merchandise with the drawee. I cannot explain this upon any ordinary rule of human conduct with which I am acquainted, consistent with an ordinary amount of sanity or intelligence.

About the 9th of October, at noon (and we must keep that date in our minds), Huntington is arrested. The denouement has taken place. Mr. Dodge has a note presented to him from Messrs. Belden, which fell due on the 4th of October, for $6500, to wit, one of the notes that Barry had filled up. It proved to be a forgery. Mr. Dodge goes to Mr. Belden's establishment, and announces that it is a forgery. Huntington is not there, but is sent for. Huntington comes. Huntington and Belden have a conversation privately between themselves. They go down to the police-office shortly after that, with Mr. Bowyer. The charge of forgery is made against Huntington. He is held to bail in $20,000. The only forgeries then disclosed were two notes, both held by Belden. Belden and Harbeck become his bail. Now let us pause for a moment. They say that Huntington is a man not only perfectly sane and perfectly rational, but abounding in shrewdness,—that otherwise he would not have ventured into Wall street to cope with such sharp men as habitually pursue their callings and interest there. It is idle, they say, to suppose that a man bereft of reason in any degree would have the audacity to go into Wall street, and establish himself as a great financial agent or manager. Let us for a moment adopt their theory. Huntington knew that he had over $500,000 of forgeries out, did he not? He knew that he had made these written requests to Barry to fill up notes, some of which were now presented and shown to be forged. He knew that those very written orders sent to Barry, had been, when Barry gave up his business on the 1st of August 1856, carried to his (Huntington's) office, and put in a drawer there, in the presence of Mr. Barker, a brother in-law of Harbeck. That the drawer was unlocked, and open to access or handling from any person who might be there. And what? When he is arrested by Bowyer, does he ask to go to his office? No; he goes directly from Belden's to the police office. Did he send any-

body off, saying, "I am accused, take all my papers away!" No. He is bailed at the police, and then the next day he presents himself at the office of the Beldens, having before gone to his own office to attend to his business in the usual way; and during all the time that I now speak of, there was nothing to prevent any assistant of Bowyer's from going to his office and procuring those papers. The next morning, when he goes to his office, there are these very papers in this drawer, and he does not interfere with them; but Mr. Halsey, Harbeck's clerk, goes to that establishment, procures them, and delivers them to Mr. Bowyer.

Now, I ask you, Gentlemen, as reasonable men, upon what principle of known and habitual human conduct can you explain these transactions of Huntington? Whatever we may think about the learning of metaphysicians and the profound speculations of those gentlemen who have treated of the mind, either in connection with physiology, or in the abstract, there are certain things we know about our own race which no knowledge can mystify, and no sophism extinguish. We all know that self-preservation is the first, the last, and the strongest instinct implanted within the bosom of every living thing. We all know that the exhibition of self-preservation in every living creature, capable of knowing what are called "right" and "wrong," is, in preparing to do wrong, to provide against its discovery, and, when wrong is inflicted, to conceal the evidence that you were its perpetrator. No living creature of our race—I need not say any of the inferior animals, although they have the same developments—is destitute of these tendencies. You knew when you were school-boys, and you know now you are men,—unless, indeed, constant purity has ever attended your progress in life,—but when you were school-boys, and engaged in the commission of the little follies, or wrongs, if you please, in which boys are apt to participate, you took good care to see that no witness of your proceeding was on guard, and that after the sin was committed you adopted every precaution to conceal its detection. Gentlemen, this simple and homely illustration presents that principle of self-preservation, which can never perish in the human being, but must attend us to the last moment of our existence. There is nothing known among men holier in its character, or stronger in its obligations, than friendship. It survives,—and perhaps we should regret to say it,—all the love, and all the regard that man can have for any creature. The friendship of one man for another will induce a mortal to defy,—and I regret to say this too,—the wrath and the judgment of his God. It will induce a man of high morals, religiously educated, and who feels it to be a crime against Heaven wantonly to place his life in the way of being destroyed, to encounter the vengeance of his Maker, the loss of what is sweetest in existence, to become the second in the

duel to a friend, whose honor has been slightly assailed. And yet even this friend of your bosom, this man for whom you would at another hour peril your life, let his lot be cast with you upon a single plank in mid-ocean, and under the inevitable instinct of self-preservation, if you have the superior power, you will hurl him to the destruction, from which, when unaffected by overruling necessity, you would have saved him at the sacrifice of every drop of blood poured from your dying heart.

Self-preservation is not evinced (and I challenge a contradiction in this respect), in any act of Huntington, from the period that he committed these forgeries up to the time when he was liberated by the bail of Belden and Harbeck. And from the beginning of his operations in Wall street to their sudden termination, I cannot discover a single act of common shrewdness attending his whole career. I am now speaking upon the evidence of the prosecution *alone*.

As to the uttering of this paper, we have proof from Harbeck, Stoutenberg and Halsey. I have prepared some legal propositions as to this subject, which in this connection, and as appropriate to my argument, I will present to the Court and Jury.

The defendant's counsel asks the Court to charge the Jury:

1. *That unless they believe from the evidence, that at the moment when Huntington forged or uttered the note mentioned in the indictment, he actually intended to defraud by means of such note, or the use thereof, he cannot be convicted.*

I wish to call your attention to a fact which is undisputed, that the intent to defraud, essential to be established in this or in any other case similarly circumstanced, is an intent that must have existed at the very moment either when the paper was forged, or when it left the hands of the accused. If it did not then exist, no subsequently acquired intention could attach criminal responsibility to the act.

2. *That the defendant must be acquitted, unless the intent to defraud is established beyond reasonable doubt, as charged in the indictment.*

In that connection, I will presently refer to one or two books.

3. *The Jury should acquit, nnless it be proved to their satisfaction, beyond a reasonable doubt, that the defendant, at the moment he uttered the note intended to defraud Harbeck.*

Again:

4. *The possibility that the note might reach hands other than those of Harbeck, and injure other persons would prove the intent to defraud.*

The statute provides, that every person, who, with intent to injure or defraud, shall feloniously make, alter, forge, &c., a certain species of writing, shall be guilty of forgery; but then in describing the nature and quality of the paper to which this charge of forgery can legally attach, it uses this language:—"By which

"false making, forging, altering, or counterfeiting, any person "may be affected, bound, or in any way injured in his person or "property." I find the notion seems to prevail in certain quarters, that this language, "by which false making, forging, alter-"ing, or counterfeiting, any person may be affected, bound, or in "any way injured," enlarge the character of the *intent*, so that if a paper were uttered, and thus put in such a position that it might be delivered from the hands of the first transferee into the hands of other persons, this part of the section covers the intent or rather the result to be presumed from that kind of act. My proposition is this: The possibility that a note might reach the hands of others than Harbeck, and injure other persons, would not prove the intent of the defendant to defraud. The words in the statute: "may be affected, bound, or in any way injured in "his person or property," relate exclusively to the character and effect of the forged instrument. It must be such as from its own character may produce the injury, and *besides that* there must be an intent to defraud. I refer in this connection, to the case of *The People* against *Wilson*, in 6th Johnson.

That was an indictment having reference to bank paper not recognized by our law, and the party was acquitted, because the bank note was not recognized by law as an instrument by which any person could "be affected, bound, or in any way injured in "his person or property;" although the intent to defraud existed, that did not make the act criminal. In the case before Chancellor Walworth (*People* vs. *Shall*, 9 Cowen, 778), there was no doubt about the intent to defraud, but the party was held not liable to be convicted of a statutory forgery, because, although an intent to defraud existed, yet the receipt did not operate to discharge the debt. Therefore, when an instrument is presented here, and you say a man forged it, you must prove, not only that he forged and uttered it with an intent to defraud,—all that will be immaterial, unless you superadd the third requisite, to wit:—That the paper being forged was of such a character, that it could injure some one in property and person.

5. *Though the law presumes that every man intends the consequences of his own acts, and may presume that, when he forges or utters a forgery, he intends to defraud, yet such presumptions are not, nor is either of them, conclusive upon the jury, but may be disregarded entirely, and overcome by facts which show that there was no intent to defraud.*

Here I take issue directly with the prosecution. I deny that the jury *must*, in any criminal case, conclusively infer guilt from any circumstance, or any set of circumstances. A great struggle took place in England, about the law of libel, for there at one time, jurors were only permitted to say whether the publication was proved or not, leaving to the court to determine whether it was a libel. That question gave rise to one of the

greatest struggles on record. It brought forth the famous letter of Junius to Lord Mansfield; and although I do not much admire that anonymous asperser of character, yet I recognize the propriety of some principles for which he contended. If it be the law of this land, that, because judges in England or here say, that a certain logical conclusion is warrantable from a certain state of facts, a jury must also so declare upon the question of intent,—I combat that proposition, and aver that the jury are not reduced to any such mere mechanical condition. This, Gentlemen, is a great question in this case; and if the prosecution do not satisfy you upon it, the prisoner must be acquitted.

It is undoubtedly a presumption of law that every sane man intends the consequences of his own acts; and that, nothing else appearing, the fact of a man committing forgery, conclusively shows that he intends to defraud some one; but if one of you, Gentlemen, were passing down Broadway, and jostled against me, and I fell against another person and hurt him, the law would presume that you intended to injure the person against whom I jostled, though you had in truth, no such design. So it was in the case where a squib was lighted in a market place. The first person took it from the ground and flung it from him, another and another cast it, until injury resulted. The law held that he who first set it in motion, was liable for the last injurious results. It was precisely similar, when Guillet ascended in his balloon from this city, and unfortunately alighted in a garden, when an attentive mob, the observing and unemployed gentlemen who superintend the erection of our public buildings, and are ready for a part in any public emergency with which they have no proper connection, rushed upon the gardener's land with their natural impetuosity, and injured his vegetables and fruits; and he(the gardener,)brought an action against Guillet; who was held responsible, on the ground that he was the great original cause of the mischief, and therefore must be held responsible. There are, undoubtedly, certain principles in the law, that must be generally adhered to. You must presume that a sane man presumes the consequences of his acts,—that if a man passes off a forged note, he intended to do it fraudulently. But this is only a presumption. It is an item of *evidence*, which, like any other piece of evidence may be overcome, and being overcome, the presumption is removed,—the presumption ceases.

Again:

6. *If the jury believe that Harbeck received the note with the knowledge that it was not genuine, the defendant should be acquitted.*

Again:

7. *If the Jury believe that Harbeck received it exclusively as collateral security, on a usurious loan to Huntington, and knew the loan to be usurious, then the defendant should be acquitted.*

Now, my learned brother (Mr. Noyes) knows, that during the course of this trial we were asked whether we would risk our professional reputation upon assuming any such ground as this: that a man who passed a forged note in consummating a usurious transaction could not be convicted? I am sorry to receive the censure of my learned friends in any matter relating to the science of the law, because of various reasons which it would be fulsome in me to state; but I do gravely, after mature reflection, and upon a careful examination of the authorities, maintain as matter of law, that you cannot predicate an intent to defraud of a transaction in which the giver and receiver of the thing (which is said to be the instrument and means of the fraud) are guilty of crime in agreeing either to bestow or take it. For example: suppose that two burglars were to break open one of your houses, Gentlemen, and steal from you a quantity of valuable silver plate; that on the morrow they met, in their elegant and expressive phraseology, to "smash the swag." They proceed to divide the booty, when one prefers to sell out his interest, and relinquish his share of the plunder. "How much will you take for your share?" says the other. "A hundred dollars," is the response. The bargain is consummated; he disposes of his share of the booty for a hundred dollars, which is given, not in good money, but in a forged note. Now, do my learned friends mean to say that, though one burglar may have intended to cheat his fellow out of his share of that guilty enterprise, it could be alleged in law that here was any intent to defraud? I claim that it could not, unless there be some distinction between felony and misdemeanor. What is the law as to usury? Why that all the parties who engage in it are punishable criminally. The judge who presides in every criminal court of our State, is obliged to instruct the grand jury, when they appear before him, that it is their special duty to inquire into offenses against the usury laws. Then we have it reduced to this proposition as a matter of law: Can it be pronounced that there is that species of intent to defraud which will amount to a crime in the intention of one party in a criminal transaction to cheat another out of his share in the results? That is the proposition for which our learned opponents contend, and they instance the transactions at the gaming-table. So far as the English case on the subject is concerned, I have not seen it yet. As to the American case, in Thatcher, it was a forged bank-note, changed at the gaming-table, not passed in the course of gambling. I never knew that the act of gambling in England or here was of itself indictable. I have reference to authorities upon that subject, but I will not examine them now.

Again:

8. *There is no proof whatever of any intent to defraud Harbeck, or that he was in fact defrauded.*

The Court here took a recess for half an hour.

On the re-assembling of the Court, Mr. Brady resumed his argument:

The next proposition, if it please your Honor, is,

9. *That delivering the note merely as collateral security, or a pledge to Harbeck, does not constitute an uttering within the meaning of the statute against forgery.*

I refer to the 3d Yerger's Reports, p. 451; 21 Wendell, 590; and Barbour's Criminal Law, 126. In *Gentry* vs. *The State*, in the 3d Yerger, it was decided, that pledging a counterfeit note which is to be redeemed at a future day, is not a passing within the meaning of the act of Assembly creating the offense.

Again:

10. *If the jury believe that when the defendant gave Harbeck his check for* $21,000, *dated Sept.* 9, 1856, *he intended it should be paid at the bank, and if in fact it would have been paid if presented, defendant having funds there to meet it, then the allegation of fraudulent intent charged in the indictment has not been sustained and the defendant should be acqaitted.*

I will presently hand those propositions up to the Court.

This brings me, Gentlemen, to our allegations that there is no evidence of intent to defraud Harbeck, but, on the contrary, proof conclusive that there was in Huntington no intent to defraud. This proof comes both from the prosecution and the defence. Mr. Greenleaf in his Treatise on the Law of Evidence, 13th section of the 3d vol. says, "Another cardinal doctrine of criminal law, founded in natural justice, is, that it is the *intention* with which an act was done that constitutes its criminality." That is founded on natural justice. I supposed that everybody understood this truth until the present trial commenced; and I supposed that when it came to be contended in a court of justice, that a man ought not to be convicted of forgery if it were proved (now mark me, Gentlemen), *if it were* PROVED that he was not sane when the alleged forgery was perpetrated, it would not be proclaimed that there was something very extraordinary and unjustifiable presented in such an idea. Since this trial commenced I have heard in omnibuses and railroad cars, where I was wholly unknown many comments on the Huntington case. I heard people say they never supposed it possible that any one in a court of justice would claim that insanity should excuse a man for the commission of forgery. Well, why? I waited to hear some reasons. I heard one argue, that if a man committed a murder, no matter how cool and deliberate, and it was shown that he was a raving lunatic, he ought to be excused; but if a man were liberated on the ground of insanity for forging paper it would be most destructive to the commercial interests of this great metropolis. Well, Gentlemen, if the "almighty dollar," that thing which does so much to excite our national character, and attest our national habits, is to be the moral criterion and standard by which the existence or non-existence of

crime is to be determined, without any reference to intent, let the dollar be what the Stork was in the fable, and let us be its satraps and subjects and victims; but if it be true, as stated here in Greenleaf, that it is a principle "founded in natural justice," that the intent with which the act was done determines the criminality, let us cling to this principle closely, and let the dollars take care of themselves. Mr. Greenleaf says further: "The intent and the act must both concur to constitute crime. *Actus non facit ream, nisi mens sit rea.* And the intent must therefore be proved, as well as the other material facts in the indictment. The proof may be either by evidence, direct or indirect, tending to establish the fact; or by inference of law, from other facts, proved. For though it is a maxim of law, as well as the dictate of charity, that every person is to be presumed to be innocent until he is proved to be guilty, yet it is a rule equally sound, that every sane person must be supposed to intend that which is the ordinary and natural consequence of his own purposed act. Therefore, when an act in itself *indifferent*, becomes criminal if done with a particular intent, there the intent must be proved and found; but where the act is *in itself unlawful*, the proof of justification or excuse lies on the defendant, and in failure thereof the law supplies a criminal intent."

I desire to submit to you a proposition, the result of much thought upon our part, and leave it for you to say whether it be sound, sensible and practical, or not. I claim, that if there be any offense to which the unsoundness of the culprit's mind should constitute a perfect defence, it is above all others that which derives its characteristic from the intent. When you charge a man with intending to do wrong, evidence to show his state of mind in reference to his act, should be favorably received; and if forgery be deprived of its criminality by the absence of intent to defraud (as was admitted by the prosecution in opening this case), then I suppose it would be appropriate, merciful, and just, to consider what kind of a man he is in intellect against whom this intent to wrong is alleged. When Sir Walter Raleigh was executed in England, under a prosecution, the injustice of which has shocked the sensibility of most writers, and when some suggestion was made to him at the moment he was about to meet with death, that his head was improperly placed, he made use of this beautiful and memorable expression: "It matters little how the head lieth so that the heart be right." And, Gentlemen, it matters little in the affairs of life how the head may err, except as to civil consequences, if there be no impurity and wrong in the heart. In a civil action you may prosecute a lunatic and recover damages for his acts, although the amount of damages will in certain cases be diminished by reason of his insanity; but when you claim to hold him responsible as a criminal—as one who intended, with full knowledge, to

violate the rights of his fellow man and the laws of the community, it is of the utmost consequence to take care that you do not commit a greater wrong in punishing him, than he could have done in perpetrating all the illegal acts, that might, at any time, have suggested themselves to his disordered brain.

Now, Gentlemen, I approach a branch of this case, in regard to which there has been much hinted, and there is much to be said. I approach it with a distinct consciousness that its due appreciation and just estimation require the utmost fairness; the utmost freedom from prejudice; the utmost intelligence, and the utmost love of right and independence, that you, Gentlemen, as Jurors are capable of exhibiting. I mean INSANITY.

When Mr. Clarke, the intelligent witness we called, had given you a detail of Huntington's transactions, and said that when apprised of the defence that Huntington was of unsound mind, he disfavored the idea, because he did not think much of such defence, I made the remark that no body else did. I made that observation with the full consciousness, that whenever, in a criminal cause, the effort has been made to save the accused from conviction on the ground that he was not sufficiently sane to be responsible, the sympathies, the prejudices, the feelings, and the judgment of all the community, including the jurors, have uniformly tended against the defence. I remember no instance to the contrary. But, Gentlemen, fortunately for the character of mankind, jurors have heretofore done in other cases what you have done in this,—listened with the greatest attention to every item of proof adduced; and I entreat you to be equally patient, as you have been already, while I discuss this branch of the case. At whatever conclusion you may arrive, Gentlemen, I shall be satisfied that it has been reached after the application of your best intelligence, honestly exercised upon the subject which I am now to examine.

I ask you, Gentlemen, *Was the defendant insane when he perpetrated any act of forgery, or uttered forged paper, as charged in this indictment?* It is a most interesting inquiry. It is in some aspects peculiar. It involves the learning of physicians, of lawyers, and writers on medical jurisprudence; but I contend that it is capable of being understood and appreciated by all men of moderate intelligence, and decided by such men justly as between the community and the accused.

There is no danger of your being "humbugged," to use one of the vulgar conventionalities of the day. There is no danger that you will subject yourselves, as the *Times* this morning suggests, to the ridicule of your fellow-men by any judgment at which you may arrive. But, suppose there were? I should like to know if a merchant engaged in his business, should arrive at a conclusion from reading part of the publications of this trial or from loose convérsation,—which I shall assume for the argument

to be different from one already in your minds,—how far would you be affected by the circumstance, that he, without the sense of the responsibility under which you act, and the aids to judgment which you receive from the law officers of the State and county, and such as may be afforded by the counsel for the defence—came to a conclusion different from yours? If the time should ever arrive when a jury in any case permit themselves to be affected by popular clamor, then it is idle to talk of the benefit of our constitution, and the trial by jury. We might as well resolve the whole administration of miscalled "Justice," into Lynch law, and let the mob determine when a man shall be punished and when liberated.

The first time I appeared in a criminal cause of any magnitude, was in the old Court of Sessions, associated with my able and chivalric friend, the late David Graham, Junior, who is, I hope, enjoying the happiness of Heaven. He was the object of my young, my idolatrous love. In him our bar possessed one of the most eloquent, noble faithful, and honest advocates that ever adorned our profession in any age of the world, or in any part of its territory. I was associated with him in the defence of a young man just of age, who was charged with being concerned in what was supposed to be a most atrocious outrage. He was tried after an alleged accomplice had been sent to the States-prison, in accordance with, if not in obedience to, popular demand. It happened more than once that when either Mr. Graham or myself rose to perform the ordinary duties of counsel in addressing the court or jury, we were hissed by the spectators; and when the prosecution indulged in language of denunciation, they were applauded as at the theater. So the feeling continued up to the time when the irresistible character of our proof established the defence of that unfortunate young man, and he was acquitted. So plainly and palpably was his innocence established, that the convicted accomplice was pardoned; for it had been incontestibly shown, that the person who prosecuted these men was utterly false, faithless and perjured in her entire story. Yes, Gentlemen, I have seen jurors manifest courage enough to be unaffected, by clamor against any defence, when they had the right and the means to look in the face of the man on trial, to scan and observe the witnessess on the stand, to weigh the arguments of the counsel who addressed them, and test as to all their sincerity and truth.

My learned associate, in his effective and thorough opening of this case, with a fervor which belongs to his nature, expressed his opinion as to the truth and justice of this defence. It was very natural in him to do so. I shall not in this respect imitate his example. There is no propriety in setting up my opinion, to influence the judgment of any juror; it could have no such effect with any gentleman here, for although I know some of you by

face, name, and reputation, I have with neither of you a personal acquaintance. I abstain from expressing any opinion, preferring to present this whole matter as logically and as frankly as I possibly can, in the hope of being able to show to every man that our defence in this particular is righteous and just.

We come, then, to the inquiry about insanity. What is the meaning of the term "*insanity*"? I shall not refer to the books to inform myself or you upon that subject. I claim that every man on the face of the earth is either sane or insane, and there is no intermediate condition. The division of insanity into "general" and "partial," I dismiss as unsound in substance and in designation. In this position I am sustained by gentlemen eminent in this particular branch of learning and investigation; and who, as I understand their testimony, utterly repudiate the idea of "partial insanity," as opposed to that called "general insanity." Drs. Parker and Gilman unite in this. I submit whether it is not plainly true, that if insanity—whatever may be the particular mode of its development, or however it may show itself—be a *physical disease*, and arises from disorganization, or sickness, so to speak, of the brain, then a man is sane when his brain is in a perfectly healthy and natural condition, and he is not sane when his brain is so affected by physical disease as to pervert and make unnatural the operations of his mental or moral nature. So that insanity is the opposite of sanity. A man is drunk or sober. If sober, he is not drunk, and if drunk, he is not sober. I have heard attempts to define when a man was drunk; and I remember that in a certain libel suit this question led to great conflict among witnesses; but in the ordinary affairs of mankind, you know when a man is perfectly sober, and when he is not. So with insanity,—a man is either sane or insane. It does not make any difference in regard to insanity that it is exhibited only upon one particular subject, and not on others. My learned associate (Mr. Bryan) has, for convenience, designated the particular form of insanity here as "monomania." Well, Gentlemen, the term "monomania" is a Greek word, which ordinarily would seem to signify that the mania did not affect the man generally, and reach all subjects, but related to one or a limited number of subjects. I have visited the institutions on Blackwell's Island, and had the pleasure of seeing there the best illustrations we can present, not only of the wealth and resources of our community, but of the wisdom and judgment manifested in our New York Government. Heaven knows that upon *this* island, we see little efficiency or advantage in municipal regulations; but on Blackwell's Island, many benevolent and admirably conducted institutions are found,—none more remarkable than that prepared for the insane. There is amongst the inmates of the Lunatic Asylum a well-known man. He is an Englishman by birth, of middle age, somewhat spare in habit, with light

hair, and a pale, quiet, meditative countenance, so much so, that if he were to present himself at some place of public resort, no person would detect in his presence (if, indeed, he were noticed at all), any thing to mark him at all, except gentleness and modesty. The notion that you can generally perceive insanity in the human eye, is a popular delusion of the ignorant. Some persons imagine that if twelve men were to march into this room, six sane and six insane, they could discriminate between the two classes without any difficulty; but the ablest physicians are incapable of doing any such thing, as we shall presently learn from high authority. How could I prove the man I have mentioned, to be insane? He used to lead the orchestra of the Broadway Theater. He is an excellent musician, and performed in my hearing some difficult passages of music, in a manner indicating his skill as an accomplished artist. In his ordinary conversation, nothing remarkable appeared; but when he was asked, why a man of such capacity remained upon that Island, he replied that he was only staying there until he could get sufficient capital to build an immense steamship, which would cross the Atlantic in three days. In nothing but his speculative tendency did any of us perceive indications of insanity; and the calculations he has made to accomplish his project, and secure the required capital, (granting his premises) are like those which a prudent man might make. Now, if that unfortunate were on trial here for some offense committed on Blackwell's Island, you could not perceive any thing in him tending to insanity, except that he talks idly and wildly upon a peculiar speculation. To that you would have to superadd the testimony of his medical attendant, who believes him to be insane, from what he knows of his organization, and his developements. In what other way, and upon what other proof, could his insanity be established? If one of you were keeper of the Insane Asylum upon Blackwell's Island, and were prosecuted for false imprisonment in detaining him, how could you establish a defence, except by showing the erratic conduct of the individual, and furnishing the opinion of a physician?

But, Gentlemen, I am aware of the prejudice against this defence of insanity; and I regret to say that the feeling is exhibited in the medical profession, because in this country, and at this particular time, the tendency of all men seems to be towards the thing we call "popularity," or "notoriety," which has somehow or other, perversely become almost the synonym of "fame." Some doctors, in their practice and in their speech, sometimes accommodate themselves to the caprices of the Mrs. Partingtons,—study the whims of loquacious old women about town, and practice as if they would rather have their judgment than all the lights of learning. These men are so destitute of moral courage, that if they found the general current of public

opinion setting against any thing which, from their knowledge of science, they knew to be correct, they would rather skulk behind any protection, however despicable, than boldly state what science commands them to utter. Yet not one physician has been procured in the city of New York, to come upon this stand and contradict one word that came from the lips of Dr. Parker or Dr. Gilman. If there be any fallacy in the statements of these gentlemen, why have not the prosecution called some one out of the multitude of physicians to expose and correct the error? If there be upon this island one man, whose name adorns the medical profession, and who is willing under the sanctity of an oath to dispute the propositions of the eminent men that we have placed upon the stand, why is he not here? The press says, "Why, if you permit this, or any other man, to escape from punishment on the ground of moral insanity, the consequence will be that this will always be the plea of everybody indicted for an offense, when he has no other to make." Indeed! Then I suppose we are to anticipate that men will commit crimes with the expectation, when caught, to defend themselves on the ground of moral insanity, and prove it,—that they will have some convenient witness to show that hereditary insanity existed in their families, the peculiar characteristics of the prisoner in childhood, the special circumstances affecting his organization, and all the other facts necessary to convince a jury of his insanity. "Let Huntington off," they say, "and then forgery runs riot in the community." Why, Gentlemen, the commission of crime is not in one case of a thousand encouraged by the idea, that being detected the offender may possibly escape punishment. If sane, he is almost invariably under the supposition that he will never be detected. No one supposes that when a man commits a burglary he is thinking that if caught he may possibly escape punishment from defective proof, or the efforts of counsel. The idea that it is dangerous to the community to let a man go free on the ground that he is insane, because it would encourage other persons to commit crime and escape by setting up the same defence, is the most curious notion that ever entered into the mind of any one claiming to be logical. The *Sunday Times* says, in a paragraph, something to this effect: "Go on, Gentlemen of the bar! the administration of justice is already a great farce; go on, and make it still more a farce." It *is* often a perfect farce, and I will tell you why. I have defended several men at the criminal bar, some of them belonging to my political creed, and some to another, with which I could not have any association, and the difficulty in convicting has been the want of a moral basis for the prosecution,—the want of any confidence on the part of the jury, that they would by condemning the accused do half as much good to the community, as if they were to convict the secret agents behind the prosecution, who moved its

machinery, and were sheltered under its influence. Just so the thought may arise in this case. How little comparative benefit will be done to this community, if twenty-five Huntingtons,—twenty-five bankrupt forgers, who set up with an enormous capital in Wall street, to "flourish a while and to fade,"—be sent to the State-prison, while the men who encourage such bankrupts and such forgers, and give them the means of carrying on a large credit business, are allowed to go, not only "unwhipt of justice," but depart from this court room covered with the glory and prosperity and happiness of having sacrificed him who was their tool and minion for the large acquisition of sudden, if not dishonorable wealth!

Now, Gentlemen, this objection to the defence of insanity has not escaped the attention of the writers upon medical jurisprudence. Dr. Ray's work is admired and consulted by the profession. He is the physician to the Lunatic Asylum of Rhode Island, and was a fellow-student of Dr. Parker. He is one of the ablest men in the country, and, as you will see, one of the clearest writers. He had made himself familiar with what occurred in courts of justice; and he has given us his reflections in this way:

If the doctrines here laid down relative to moral insanity and its legal consequences, are correct, it would seem to follow, as a matter of course, that they should exert their legitimate influence on judicial decisions. Nevertheless it is contended, and that, too, by some who do not question the truth of these doctrines, they ought not to have this practical effect, for the reason that insanity would thereby be made the ground of defence in criminal actions to a most pernicious extent.*

You will perceive that he is fully possessed of the common objection in these cases. And he goes on:

Stated in the plainest and strongest terms, the objection is, that if these doctrines should be recognized in our courts of justice, and suffered to influence their decisions, almost every criminal would resort to a defence the tendency of which is invariably to puzzle and distract the minds of the jury, and to produce the acquittal of many a wretch, who would first hear the mention of his own derangement from the lips of ingenious counsel.

I think he states the argument against it pretty strongly.

However, if we were disposed to accord to this objection all the foundation that is claimed for it, it would not seem to warrant the inference that is drawn from it. Are we to take from the maniac the defence which the law of nature secures to him, because it may sometimes be offered by those who use it as a means of deception? Are the innocent to be made to suffer for the devices of the guilty? To avoid this cruel injustice, therefore, without at the same time inflicting a positive evil upon society, we would deduce from this objection an inference of a totally different kind. It is, to let the right of the accused party to make his defence be encumbered with no restrictions, expressed or implied; to let the plea of insanity, if he choose to make it, be attentively listened to, the facts urged in its support closely scrutinized, the accused carefully and dispassionately examined, and his character and history investigated. If this duty is performed as it should be, and always may be, the case will seldom happen when the truth will not be established to the satisfaction of every unprejudiced mind. If the accused be really insane, we have the satisfaction of reflecting that an enlightened investigation of his case has saved an innocent person from an ignominious fate; while, on the other hand, if he be

*Ray's Medical Jurisprudence, sec. 261.

simulating insanity, even doubt will be dissipated as to the justice of his sentence, and the conviction will be strengthened in the popular mind, that the law will prevail over every false pretense and expose the guilty even in their most secret refuge.

Such is the language of the eminent physician,—the man full of observation, and abounding in means of observation as to lunatics, their exhibitions, and their treatment.

I will now read to you what is said by Chief Justice Parker, of New-Hampshire, so that both professions may give their testimony, and you will see how this subject has been regarded. In his charge to the Grand Jury of Merrimac County, N. H., in 1838, and quoted in volume xx. of the American Jurist, pp. 457, that learned judge says,

The public papers, in giving reports of trials, often say, "The defence was, as usual, insanity," or make use of some other expression, indicating a belief that this species, of defence is resorted to, in desperate cases, for the purpose of aiding in the escape of criminals from justice. Such opinions are propagated in many instances by those whose feelings are too much enlisted, or whose ignorance respecting the subject is too great, to permit them to form a dispassionate and intelligent judgment; and they have a very pernicious tendency, inasmuch as they excite prejudices in the public mind, and the unfortunate individual who is really entitled to the benefit of such a defence is thereby sometimes deprived of a fair and impartial trial. They tend to make the defence of insanity odious, to create an impression against its truth in the outset, and thus to bias the minds of the jury against the prisoner, and to induce them to give little heed to the evidence, in the very cases where the greatest care and attention and impartiality are necessary for the development of truth and the attainment of justice. * * * If we imbibe the idea, that instances of insanity are very rare; that derangement exists only when it manifests itself by incoherent language and unrestrained fury; that the defence, when it is offered, is probably the last resort of an untiring advocate, who, convinced that no real defence can avail, will not hesitate to palm off a pretended derangement, to procure the escape of his client from a merited punishment,—if in this way we steel our hearts against all sympathy, and our minds against all conviction, it is of little avail that we agree to the abstract proposition that insanity does in fact furnish a sufficient defence against an accusation for a crime. There are, undoubtedly, instances in which this kind of defence is attempted from the mere conviction that nothing else can avail,—cases in which the advocate forgets the high duty to which he is called, and excites a prejudice against the case of others, by attempting to procure the escape of a criminal under this false pretense; but such cases are truly rare, and usually unsuccessful.

I commend the language of the physician and the judge to the just consideration and regard of this jury. The language I have read has not been prepared for this trial, but is the result of experience and reflection, and emanates from men who wish, as the law recognizes insanity as an excuse for crime, that when an accused sets up such a defence, he shall not be cheated out of a fair trial by any outside pressure or influence.

I will now refer you, Gentlemen, to a report of the trial of Richard W. Clark, for murder at New Haven, where the defence set up was insanity. This, you will remember, took place in Connecticut, in a New-England community, where certainly the love of order, and the methods by which they preserve it, are not inferior to those which prevail elsewhere. The murder was per-

petrated in open day-light, in the presence of numerous witnesses; the party acknowledged his crime, and manifested many of those traits which seem to have attended Huntington's career. I take the liberty of reading a portion of Mr. Harrison's argument for the prisoner, at page 98:—

I propose now to go into the question of sanity or insanity. First let me allude to a common prejudice which the Attorney for the State has tried to enlist against us in this case. The defence of insanity is generally regarded with suspicion. An impression prevails that juries are liable to be deceived by it, and that the public interests are always in danger when this defence is made. This impression is false. I will prove it false. I undertake to prove, that while juries are in little or no danger of being deceived by the defence of insanity, they are in great danger of improperly disregarding it. Look at the history of criminal trials. Take that very case of Bellingham, cited by the opening counsel. Bellingham was insane and irresponsible: nobody doubts it. Yet within one week after committing a homicide under the influence of insane and uncontrollable delusions and impulses, he was convicted, hung, and cut in pieces on a dissecting table. It was a bloody business, and it shocked the conscience of all England. Take the case of Freeman in New-York, who was defended on the ground of insanity, was convicted, obtained an order for a new trial, and died in prison. His brain was dissected, and found rotten. Take the case of Thurston, tried and convicted in the same State a few years ago. A new trial was granted. On the second trial he was acquitted, and has ever since been confined in a lunatic asylum, unmistakably deranged. Kleim's case, tried in the same State not long ago, is an instance of a man acquitted with difficulty on the ground of insanity, who has, since his acquittal, given unquestionable evidence of mental imbecility. Then, there is the case of Abner Rogers, tried twice in Massachusetts, acquitted on the second trial, clearly evincing his insanity afterwards, and finally ending his life by suicide. Take the case of Goss, in our own State, who believed himself to be a second Lamb of God, and died in that faith on the gallows. Remember also the case of Woodford, who was tried in Hartford county some years ago, was defended by my brother Chapman on the ground of insanity, was convicted of manslaughter on his second trial, manifested his insanity afterwards so distinctly that no man could doubt it, and died a lunatic. We might refer to the cases of Brown, Bowler, Howison, and Arnold, and others, in Great Britain; of Baker, in Kentucky; of Prescott, in New Hampshire; and to many other cases of the same general character. The examination would satisfy us that insane and irresponsible men are frequently convicted by juries, and that in almost every instance where the defence of insanity has prevailed, the party accused has, after acquittal, given indisputable evidence of insanity. Indeed, so far as New England is concerned, I defy the learned gentlemen to name a case where the defence of insanity having been successful, has not afterwards been vindicated by the clearest evidence of the insanity of the person acquitted. Hear what that eminent man, Dr. Woodward, late Superintendent of the Worcester Asylum, says on this subject:

"Of all the cases that have come to my knowledge, and I have examined the subject with interest for many years, I have known but a single instance in which an individual arraigned for murder, and found not guilty by reason of insanity, has not afterwards shown unequivocal symptoms of insanity in the jails or hospitals where he has been confined: and I regret to say that quite a number who have been executed, have shown as clear evidence of insanity as any of these."—*The Annual Report*, p. 73.

Dr. Bell, of the McLean Asylum, cited by Ray, in *Medical Jurisprudence of Insanity*, p. 275, says, "thatf or one real criminal acquitted on the score of insanity, there have been a dozen maniacs executed for their criminal acts." Dr. Brigham, formerly of Connecticut, a learned and eminent investigator, once well known to his Honor, the Presiding Judge, says in his Eighteenth Annual Report of the Hartford Retreat for the Insane, p. 19. "I know it is a common, but frequently, I suspect, a careless remark, that the plea of insanity is too often successfully adduced as an excuse for crime. So far as I have any knowledge, this is not the case. I do not know of a single instance where the insanity of an individual has been certified to by those well informed and well qualified by experience with the insane to judge on such a subject, that time and public opinion has decided to be incorrect; while I

know many instances where the plea has been disregarded, which time has shown ought not to have been. I have seen several kept in prisons for crime, where their appearance and conduct convinced all that they were insane, and insane when brought to prison. One, happily now in the lunatic hospital in Worcester, Mass., was kept several years in the prison of our State for an act committed when he was as insane as he now is; and of his insanity at the present time there is no question. It might be well for those who, in halls of legislation or in courts of justice, confidently assert that insanity is frequently feigned, so as to deceive those well-informed on the subject, to adduce instances of the fact. In a case where the life of an individual is concerned, it is especially important that remarks of this kind should be supported by facts!"

You will excuse me, Gentlemen, for having fortified myself against the common prejudice which always attends the defence of insanity, by using for my client, as necessary, the intelligence and industry of this faithful lawyer. Let me add, that the prisoner was acquitted on the sole ground of insanity.

I now call your attention to one of the most striking cases on record,—the case of William Freeman. I hold in my hand a report of that trial, furnished me by Mr. Samuel Blatchford, who was, I believe, associated with Wm. H. Seward in the conduct of that case. Freeman was defended with great ability against the prejudices and fury of the whole community in which he lived. The unfortunate culprit was a poor colored man, destitute of means and friends; but it seldom has occurred that a man, however poor, when his life was in danger, could not command the highest talent at this bar, or any other, to render him assistance in the dark hour of his necessity. Yes, Freeman was a poor, friendless, crazy negro. There was warrant for believing that he was not guilty of a crime for which, early in life, he was convicted, and sent to the State-Prison. He manifested great restiveness there, protesting his innocence, and complaining of his imprisonment; and he received severe, if not brutal punishment. His defence on the capital charge was undertaken by Mr. Seward. The accused was prejudiced even by this circumstance; for Mr. Seward having peculiar views affecting the race to which Freeman belonged, nobody gave the advocate credit for sincerity; but, on the contrary, nearly all denounced him as seeking after popularity. My learned friend, the District Attorney (Mr. Hall) and myself, do not exactly agree in our notions about men and human nature. He said that I "spoke rather like a cynic than a philosopher," when I declared that man would much more readily believe evil of his neighbor than good. I retain my opinion. There is an instinct in every human being that relates to the purpose for which the Almighty seems to have designed him,—a roving hunter,—"to live as the hunter liveth, and to die as the hunter dieth." No race of mankind is ever satisfied with the place in which it first achieved prosperity. However large, rich and fertile the domain possessed, we are ever eager to push out, even in the midst of our luxuries and enjoyments, and seek new theaters for physical and intellectual effort. When we look back upon

history, we find that civilization has forced its path over the ruins of empires; and there is not a single fallen column, there is not a smouldering cornice, nor a piece of stone round which the weeds cluster in desolate places where at one period luxury, refinement, and art may have existed, which was not in its overthrow a necessary foothold for that progress which, we think, has advanced us to a position so enviable in these latter days. We are a restless, roving race of hunters; and the very moment you give the common multitude an object to pursue, the instinct of the chase naturally tends to superiority over judgment and humanity. When any thing flieth from mankind they all pursue; let it turn with the courage of a rat, and the multitude are likely to fall back. The instinct of our race is developed in the administration of the law. When a man is charged with what is termed a "great crime," did you ever know the newspapers to suggest that he might possibly be innocent? Is that because editors are destitute of humanity? No, but entirely because of this instinct. If you go into a court of justice you will find that in almost every extraordinary case, the instincts of the multitude are with the state. When the prosecution are in want of testimony, any man who, far off in Texas, knows a fact that can assist the People, will communicate it to the district attorney; but if you were charged with crime, accused, though innocent—arrested, and brought to trial, men who were present, and saw the deed committed by another, would often rather suffer you to die guiltless on the scaffold, than come forward and confess that they were at the scene of the occurrence, if that might expose them to shame or even to trouble.

Mr. Seward, of course, had no credit for good motive in defending Freeman; but I believe that he was actuated by the best feelings on the occasion, although I am no admirer of the man generally. Freeman was tried for the murder of the Van Ness family, under circumstances too horrible to relate in detail. It was suggested by his counsel, that under the statute of the State, a preliminary trial should be had, to determine if he was sane enough to make a defence. A jury was accordingly empaneled for that purpose. The attorney general went so far as to express his personal opinion to the jury, that he thought that he was perfectly sane. The jury would not find directly upon the question submitted to them, whether the prisoner was sane or insane generally. They strangely avoided that, but found this peculiar and special verdict, "*We find the prisoner sufficiently sane in mind* AND MEMORY TO DISTINGUISH BETWEEN RIGHT AND WRONG." I will call your Honor's attention to this, because I mean to apply it presently in a legal view. The counsel for Freeman insisted that this was not a full finding; but the court consented to receive the verdict.

The same defence was made before the jury on his trial, and a number of the most able medical men were examined to prove his insanity; but he was found guilty of murder. In November, 1846, a new trial was ordered by the Supreme Court, because of errors in law; but poor Freeman was never tried again. He died in his cell in the month of August, 1847, from a disease of the lungs. Now, there stood the counsel for the prosecution, and there stood the state officers, delighted with the idea that they had successfully overcome the false pretense of insanity, presented in behalf of a barbarous negro, who had murdered an innocent family in cold blood. There were the counsel for the defence, destined, it would seem, to rest forever under the imputation cast upon them. But a *post mortem* examination was held; and what then? I propose to call your attention to one or two lines of that examination, and if this be not a warning to people who discourse so lightly in the press, or out of it, upon the appreciation that a jury should have of the defence of insanity,—if this cannot, I say, be a warning, then, if the skeletons of all the murdered men who have been placed upon the scaffold, guiltless in the eye of God, as they ought to be in the eyes of men, should rise in their ghastly majesty, and utter solemn admonitions as if directly from Heaven, there would be no such thing as influencing a jury to approach such a defence without prejudice and without sympathy, fearlessly and courageously resolved to investigate the evidence and decide upon it honestly, whatever the consequences might be. Dr. Brigham says,

As regards deductions from this post-mortem examination, it must be evident to every one, who has even but a slight knowledge of the physiology and pathology of the brain, that such a condition of this organ and its membranes as was found in this case, was incompatible with the healthy performance of the mental faculties. I have very rarely found so extensive disease of the brain in those who have died after long-continued insanity, as we found in this instance; and I believe there are few cases of chronic insanity recorded in the books, in which were noticed more evident marks of disease. It should be recollected, that although insanity is a disease of the brain, yet it usually is but a slight disease of this organ. If it was not so, it would soon prove fatal. Hence we find many persons unquestionably insane, to enjoy good bodily health for many years; the disease of the brain, though sufficient to derange the mind, not being so severe as to perceptibly disorder the general health. In such cases, after death some disease of the brain or its membranes will be found, but usually less than in the case of Freeman.

Dr. M. Hall says,

In my opinion his brain was permanently diseased at the time he left the State-Prison. In the examinations made and witnessed by me during nearly forty years' practice in my profession, I have never seen greater or stronger evidence of chronic disease of the brain and its membranes, in cases of insanity of several years' standing, than in Freeman's.

Now, suppose no new trial had been awarded in the case of Freeman, suppose the infallible proof had not been furnished at the dissecting table, suppose that death had not come as witness to reveal the truth of the Freeman case, what would have

been our judgment upon it? Why, every lawyer in the capacity of prosecutor, who met the defence of insanity, would have alluded to that case as unparalleled for audacity, perhaps for ability,—and would have taken the verdicts of the two juries as a rebuke, and triumphantly demonstrated that the poor negro suffered justly. And yet, with a disease calculated to lead him down to death, and with all the horrors of a brain rotten, to an extent almost unprecedented in the history of criminals, or of the insane, he was literally murdered; the only difference between the crime of those who condemned him, and the same offense as ordinarily perpetrated by criminals, being the absence of that intent in which the essence of criminality exists.

You observed, Gentlemen, that the learned counsel, when he cross-examined Doctors Parker and Gilman, put among his leading questions something like this: "Was any notice given to the District Attorney, or to the authorities, that any investigation of Mr. Huntington's mind was to be made?"

Well, I understand why he put this inquiry. I told you that there was a statute under which a person might have an investigation, as to whether he was in a suitable condition to be placed on trial, and that under that statute an attempt was made in the case of Freeman to prevent his being tried; but it was attended with so many embarrassments, as to make it quite obvious that no advantage whatever could result to the accused from any such experiment. None resulted to poor Freeman, and none could be expected in our case. My friends would make the jury believe that they were surprised by the defence; and I think some of the reporters, in their graphic and effective way, described the countenances of the spectators in court when this defense was opened. It certainly is not to be wondered at, that the dull labor of recording what falls from counsel and witnesses should provoke them to an occasional hit at passing incidents, to relieve the sameness and tedium of the trial. I admire reporters; they have one characteristic about them, which attached to our profession, would make it the most formidable on earth,—that is, a strong feeling of fraternity. They cling to each other through good and evil report; and the man who provokes that "little battalion," as my learned friend called them, had better look out that he has both a Redan and a Malakoff united for his defence, or there will be no hope for his safety or his retreat.

I suppose the idea intended to be conveyed was that my friends of the prosecution really were quite astonished at the suggestion of insanity. I think it will appear that the District Attorney was not, but that when he opened this case he had in some way or other presented to his mind, that the idea of insanity and insanity alone could reconcile, upon an even and sound judgment, all the peculiarities of this remarkable case. I have here a report of his opening remarks, in which he says,

The check was given to Mr. Harbeck, and used by him; but it had Mr. Huntington's stamp upon it, and was deposited in the Bank of the Republic, thus exhibiting upon his part the most *wide-awake* method of conducting his operations, *under this sort of moral insanity* that seems to have seized him.

Do you remember my friend using the phrase 'moral insanity?' Where did he get it from? What suggested to him the "moral insanity," which seemed to have seized Huntington? They thought the law was that moral insanity would not excuse from a crime. Whether it will or not we will see presently. My friend could not have failed to notice in the *Morning Herald* of this city, of December 14th, 1856, an extract from an article published in the London *Morning Chronicle* of Nov. 13th, headed "Defaulters in England and in the United States—Universality of Roguery,"—the concluding sentence of which is this:

It is upon the same principle that opportunities are afforded, where *monomaniacs* (for such we must consider them) like Robson, Redpath, and Charles B. Huntington, take such unexpected and dangerous advantage.

So that we find, before a suggestion was made by us as to what defence we should make, the District Attorney and the editor of the London Morning *Chronicle* came to the conclusion that Huntington's transactions were inconsistent with sanity. But were you not informed, upon the 19th of December, what our defence was? Did not Mr. Bryan then open it to the jury at large? and was not his opening published in the papers of the following day? Was not the whole attention of the medical world called to this defence, and what it was to be? And is not the medical profession very numerous here? Was there not an opportunity to get a number of physicians, and ask them every thing in regard to the theory of that opening? What was the difficulty? Had not the prosecution charge and custody of Huntington in their prison? Have they not the right of access to this prisoner by day and night? And is there any thing to prevent their going to him with any number of physicians or witnesses? They have had notice from the 19th of December to this moment, and yet have not procured one physician to come upon the stand and state one word in opposition to that opening. Such, Gentlemen, is the answer that we give to their complaint of being surprised. I know that some physicians, out of doors, differ with their brethren in opinion; but others who deservedly enjoy great reputation, and are known to be eminent and skillful, would sustain Doctors Parker and Gilman. Why have not physicians of such eminence been brought here to contradict these gentlemen? I leave that to be responded to by the counsel upon the other side. I can imagine no good reason.

We do not call Huntington's condition *monomania;* we call it *insanity*. I refer you to the language of Lord Brougham, at Sec. 17 of Wharton and Stillé, in which he says,

For we must keep always in view that which the inaccuracy of ordinary language inclines us to forget, that the mind is one and indivisible; that, when we speak of

its different powers or faculties—as memory, consciousness—we speak metaphorically, likening the mind to the body, as if it had members or compartments, whereas, in all accuracy of speech, we mean to speak of the mind acting variously, that is, remembering, fancying, reflecting; the same mind, in all these operations, being the agent. We, therefore, cannot, in any correctness of language, speak of general or partial insanity; but we may most accurately speak of the mind exerting itself in consciousness, without cloud or imperfection, but being morbid when it fancies; and so its owner may have a diseased imagination, or the imagination may not be diseased, and yet the memory may be impaired, and the owner be said to have lost his memory. In these cases we do not mean that the mind has one faculty, as consciousness, sound,—while another, as memory or imagination, is diseased; but that the mind is sound when reflecting on its own operations, and diseased when exercising the combination termed the imaginary, or casting the retrospect called recollecting.

This view of the subject, though apparently simple, and almost too unquestionable to require or even to justify a formal statement, is of considerable importance when we come to examine cases of what are called, incorrectly, 'partial insanity;' which would be better described by the phrase 'insanity,' or 'unsoundness,' always existing, though only occasionally manifest.

Doctors Parker and Gilman have their opinion based upon and sustained by that of Lord Brougham; and if any gentleman of the medical profession had come upon that stand, and undertaken to say there was not such a thing as "moral insanity," and that it could be so scientifically demonstrated,—poor as is my capacity to deal with a subject so immense, I think I could have convinced every man that the witness's reasoning could not justify his conclusions. I would certainly have found very great aid in that which I have just read to you. Why, Gentlemen, there are some who, when they are drunk, have their memories, if possible, stimulated to greater activity. Some men, on the contrary, utterly forget all that passes until they return to sobriety, and are then often reminded of things which make them blush. If it pleased the Almighty, in his inscrutable providence, to fix that man's condition in that state for the balance of his life,—would he not be insane? Certainly. For then would occur a permanent disease, bearing the same relation to ordinary drunkenness that *delirium tremens* does. The law says that an act which a man perpetrates when drunk is not excused at all; but if he has *delirium tremens*, although it result from the use of liquor, and bring upon him a disease which affects his mind, he is excused. Such is the settled law. Now, I will take another illustration, for I will deal with this case in a simple manner. Did you ever dream of some loved friend, deceased? I take it for granted that all of you have done so. Did you ever dream of that person as dead? Never, I undertake to say; but always of seeing the individual as in life. Is it not so? How is it that your recollection of having lost that cherished one is utterly extinguished or suspended for the time? Can any body explain this mystery? No; all the men upon earth, both learned and unlearned, stand as utterly hopeless in their desire to solve this enigma, as we do, who look at the stars which deck the night, and have no greater idea of their structure and

formation than the poor Chaldean shepherds that first beheld them. It is a fact known to you, that during sleep, in the then condition of your brain, the knowledge which you would have when awake is often suspended; and sometimes you rejoice, when awakened, to find the state of things you assumed to exist to be inconsistent with truth. That condition of the mind, if made permanent, would be nothing more nor less than insanity. Now, is there any particular portion of the brain which is affected to produce this result? Is memory a little distinct place by itself, so that it could be diseased, and all the rest of the brain remain in a state of health. Phrenologists and craniologists map out this brain of ours into little intellectual territories, which have peculiar functions. It is not for me to express a judgment upon that science, or its results; but it *is* for me to insist that what Lord Brougham states, and what Doctors Parker and Gilman state, uncontradicted, is correct, and that the brain, in all intellectual diseases, is to be regarded as a single thing, which is either sound or unsound, just as much as your finger. I have reduced to writing my propositions about insanity, and its legal consequences, which are,—

First—If the Jury believe that defendant was insane when he forged or uttered the note, they should acquit him.

Second—It is not necessary, in order to sustain the defence of insanity, to show that, as developed in the prisoner, his insanity had a special name, recognized in science or language.

Third—The law will not recognize a classification of insanity, as general and partial. If insanity exist, it will excuse from criminal punishment an act committed under its influence, whether the insanity exhibit itself as to only one or a large number of subjects.

Fourth—If the Jury believe, from the evidence, that when the defendant forged or uttered, or both when he forged and uttered, the note in question, his brain was physically diseased;

That in consequence of such disease, his intellectual and moral powers, including his will, were so affected that there existed in him a tendency to commit forgery;

That such tendency was in its nature irresistible; and

That under its influence, the defendant forged or uttered the note;—

He should be acquitted, although it should also appear that he knew forgery to be a crime, punishable by law, and also that defendant might possibly have resisted doing the illegal act.*

Fifth—If the Jury believe that physical disease of the brain perverted the intellect, will, and moral nature of the defendant,

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* *Beck*—722, 723, 724, 784, 790. RAY—167, sec. 145, 151, 241. *Ib.*—242, 343 (as to deportment of Lunatics.)

so that, although he knew forgery to be a crime, and punishable by law, he yet forged or uttered the note from an irresistible impulse, and without a sane appreciation of the nature and quality of the act, he should be acquitted.

Sixth—If the Jury believe that physical disease of the brain perverted the intellect of defendant, so that, in forging or uttering the note, he did not believe or feel that he was doing a moral wrong, then he should be acquitted.

Seventh—If the jury believe that physical disease of the brain, though it did not affect defendant's intellect, yet so perverted his sense of moral obligation and duty, that he did not in fact, believe or feel that it was wrong to forge, or utter a forgery, and he acted under the influence of such perversion, then for such act he is not criminally responsible, and he should be acquitted.

The newspapers and the prosecution (I associate them together, and I mean to be respectful—"*Arcades ambo*,") say, in the first place, that there is no such thing as *moral insanity;* or, if there be, it should not absolve a man from the consequences of crime. What is the difference between moral and any other insanity? One shows itself in regard to mental operations alone, irrespective of any moral duty or obligation. One man thinks he is made of glass, and another thinks he cannot walk. This delusion relates entirely to mental operations. Another man thinks that all mankind are his enemies, and that it devolves upon him to kill them. Now, there is something more than an intellectual disturbance there, because it is accompanied with a propensity to do something that he knows is against the law of the land, and punishable. That affects the moral part of his nature; so it is denominated moral insanity. Now, let us see for a moment what is said upon this subject in the books. In *Wharton and Stelle's Medical Jurisprudenc*, the latest treatise on this subject, and a very able one [Sec. 53], the case in 7th Metcalf, which has been so often referred to in this trial, is recognized and approved. They refer, in section 54, to a charge delivered by Chief Justice Gibson of Pennsylvania:

In his charge to the jury, Chief Justice Gibson, a most able judge, thoroughly disciplined in and wedded to the common law, but at the same time endowed with an energy of perception and a delicacy of appreciation which gave him a remarkable zest for and a mastery over collateral sciences,—after in the first place vehemently repudiating the doctrine that partial insanity excuses any thing but its direct results, and sliding, in reference to such cases, into the "right and wrong" test, proceeds: "But there is a *morbid or homicidal* insanity, consisting of an irresistible inclination to kill, *or to commit* SOME OTHER PARTICULAR OFFENSE."

There is a recognition of moral insanity. He further says:

To establish it as a justification in any particular case, it is necessary either to show, by clear proofs, its contemporaneous existence evinced by present circumstances, or the existence of *an habitual tendency developed in previous cases, becoming in itself a second nature.*

In sec. 58, there is an instance where Judge Story, with his usual tenderness, refused to allow the conviction of a young woman who threw her child into the water, although able to know the enormity of the act:

And what this humane and very able judge did, in the teeth of the old dogmas, from the necessity of the case, the modern psychologists teach to be in accordance with experience and right reason. The English and American writers, it may not be out of place here to notice, are distinct to this effect.

Then we have a discussion of the question whether there can be *mania sine delirio.*

Thus it is justly noticed by Schürmayer, that it is contrary to all received psychological theories to suppose that a particular passion or moral relation can become depraved, without an intellectual inflection, to some extent, corresponding. *But be this as it may, there is* A UNIFORM RECOGNITION BY ALL THE AUTHORITATIVE WRITERS *of this particular species of insanity, whether it be generally defined, according to the popular, English idiom, as* MORAL INSANITY, *or* MORAL MONOMANIA.

Now, perhaps I do wrong to the gentlemen out of doors, in suggesting that there is a possibility of their being entirely mistaken upon a subject which does not peculiarly belong to their studies and investigations; their opinions being set up against those of men in every country of the world, who have devoted their attention and reflections to this particular topic. I believe that there is a great deal of unwarrantable vanity in supposing that a man understands a subject which he has just looked at, as well as he who has devoted a lifetime to its investigation. There is not a ship burned at sea, or run foul and destroyed, but, when all the facts are known, the incident is commented upon by gentlemen occupying the cosy chairs in editorial rooms, or elsewhere, who all can tell how the injury might have been avoided, or how the consequence might have been avoided, or how the consequences might have been mitigated by management. We are a very knowing people. We know more about medicine than doctors. We know more about insanity than those who have studied it all their lives, and superintended lunatic asylums. All that must be assumed, to place us on comfortable terms with ourselves. Let us see what Chitty says about this, on page 342:

But when all, or at least some of the mental faculties, which we have thus considered, are so materially *wanting* or *defective*, or so *perverted*, as to occasion *erroneous* or *perverted* judgment upon all subjects, or upon a particular *subject*, in so material a degree as to constitute what is termed mental *imbecility* or *delusion*, and render it at least uncertain whether the unhappy individual will evince *common sense;* then, according to the nature or degree of malady, he will, in *medical* and *legal* consideration be either an *idiot*, a lunatic, or insane, or be of *unsound mind* or *memory*, and certain legal incapacity and irresponsibility will ensue.

I now take *Beck's Medical Jurisprudence*, a standard author, constantly referred to in all our courts when any question of Medical Jurisprudence arrives. At page 722 of the first volume, he says,

There remains to be considered another and disputed form of mental disease, which in conformity to the nomenclature of many experienced observers, I have denominated MORAL INSANITY. It has professedly been adopted, because physicians have not been able to detect any delusion or hallucination in the persons affected. *The intellectual faculties appear to have sustained but little injury; but the* FEELINGS AND AFFECTIONS ARE PERVERTED AND DEPRAVED, AND THE POWER OF SELF-GOVERNMENT IS LOST OR GREATLY IMPAIRED. Thus *Spurzheim* defines insanity to be either a morbid condition of any intellectual faculty, without the person being aware of this; or THE EXISTENCE OF SOME OF THE NATURAL PROPENSITIES IN SUCH VIOLENCE THAT IT IS IMPOSSIBLE NOT TO YIELD TO THEM. Dr. Elliotson, while approving of this, suggests that there should be included in the definition, the idea of such irresistible violence as *leads to criminal acts.*

Pinel was so struck with the peculiarity of this form, that he introduced it as a distinct species in his work, under the title of "*Madness without delirium or hallucination.*"

Dean, another author, refers to this subject, at page 574 of his work on Medical Jurisprudence,

Legal consequences of MORAL MANIA.—IRRESPONSIBILITY *in moral mania, rests on a different principle from that of intellectual. There is here* NO DELUSION, NO FALSE ASSUMPTION OF FANCIES FOR FACTS. The intellectual faculties may remain undisturbed in their operations, while the moral are exhibiting every variety of derangement. This, it is true, seldom occurs; as extensive derangement of the moral powers is commonly accompanied with some perversion of those of the intellect. Nevertheless, as the one set of faculties is independent of the other, there exists the possibility of their separate derangement.

Then, on page 576, he says,

Irresponsibility, where it arises from deranged or perverted action, should absolve from all accountability, because

1.—The act is unavoidable, and the actor, therefore, *no more a subject of punishment, than a machine for going wrong when some part of its machinery is out of order.* TO ADMINISTER PUNISHMENT UNDER SUCH CIRCUMSTANCES WOULD SHOCK ALL THE MORAL SYMPATHIES OF MEN.

2.—One of the purposes of punishment could never be answered by it, viz., the reformation of the criminal. If the act be irresistible, the whole effect of punishment upon the individual must be lost.

3.—Another of the purposes of punishment would remain equally unanswered, viz., the salutary effect to be produced by it upon the minds of others. That effect, instead of being salutary, would be in a high degree injurious, as it would shock all moral sensibilities, and create a horror of the law itself, which could thus needlessly sacrifice life, without answering any good end or purpose.

Now, that is enough, Gentlemen, to enlighten us upon this idea, that, contrary to what has been said in newspapers I have read, moral insanity is perfectly known and recognized among medical writers, among metaphysicians who have studied the mind and its operations, among writers upon medical jurisprudence, who have visited and superintended lunatic asylums, and among eminent judges. This mania is known in the law; and it is too late in the day for those who come with flippant speech upon their tongue, without any study or investigation, to overturn all the deductions of science, and all the experience of great investigators, by an unconsidered speech or a few dashes of a running pen. Here is the great issue between my friends and myself. They say that, although a man's intellect is disturbed,—

that although, if you please, his moral nature is disturbed, and that too by disease, yet if, at the time he perpetrates the act for which he is indicted, he knows the difference between right and wrong, if he knows that the act which he does is a crime, and that there are laws to punish it in the community, then he is not absolved from the legal consequences. The opinions of the judges of England have been and will be referred to on this branch of the subject. I, for one, deny (and I am speaking like one of yourselves,—I am speaking like one of the community, not learned upon the subject),—I deny that there ever comes a time in the history of any human being, whose memory is not obliterated by disease or age, when he forgets the Ten Commandments, if ever taught to him, or the substance of them. He may become a raving lunatic,—a man who would tear every thing to tatters upon which he laid his hands; he may require confinement by a strait jacket; but his memory may yet retain all that he was ever taught in his childhood about the law against murder, and the laws of society in which he lives and was educated against every offense known. If it ever should be made the sole test of responsibility for crime, whether the culprit remembers enough of his early instructions to know that his act is forbidden by God or man, there is not a madman in the universe, that I ever heard of, unless his derangement was such that he had no speech, or no intelligence whatever, who would not stand upon the same footing as to crime with the most sane man in the community. I shall not detain you further upon this point; but I refer to Beck, page 724:

The results of this species (viz. moral insanity) are various. In many it displays itself in an irresistible propensity to commit murder (homicidal mania); in others to commit theft; while some are impelled to set fire to buildings, often of the most venerable description. We are told that when this state is connected with a false belief of some personal injury actually sustained, it does not come under the head of moral insanity! Here is an hallucination. But if the morbid phenomena include merely the expression of intense malevolence, excited without ground and provocation, actual or supposed, the case is strictly one of moral insanity! Though there are many as above described, who have this propensity to commit each and every kind of mischief, yet there are some where the disease commences and ends in intense irascibility.

I refer now to page 784:

As announced by Dr. Prichard, *it consists in a disorder of the moral affections and propensities*, WITHOUT ANY SYMPTOMS OF ILLUSION OR ERROR IMPRESSED ON THE UNDERSTANDING.

Then at page 790:

Under this head of moral insanity, besides the impulse to murder, there is also included a propensity to break and destroy whatever comes within reach of the individual; *in short, an irresistible impulse to commit injury, or do mischief, of all kinds!* And this is observed in cases in which it is impossible to discover any motive influencing the mind of the person who is the subject of it. No illusive belief, for example, can be detected, that the lunatic is performing a duty in perpetrating that which manifests his disease! Many cases of suicide are also classed

under this head. In these instances, there is generally no particular illusion impressed on the understanding of the self-destroyer, but a perversion of the strongest instinct of nature—self-preservation! Again, the propensity of setting fire to houses or public buildings is ranked by Dr. Prichard under this head. To these, Orfila adds *monomanaical robbery*, although he allows that in this case it is rather more difficult to show the want of motive.

Now Dr. Ray, at sec. 145, adopts the definition given of this moral insanity, by Dr. Prichard.

"*There is another very common and* WELL-MARKED *form of insanity, the manifestations of which are chiefly confined to the moral sentiments.*"

That is a man writing upon a subject which he understood. Then he goes on to speak of the illustrations of it, and I beg your attention to this as a specimen:

He engages in enterprises, moral, social, or commercial, either manifestly beyond his means, or in one way or another inappropriate to his condition. Especially is he bent on speculation, and nothing comes amiss, capable of gratifying his passion. Whether it be a farm or a ship, a mill privilege, or a city lot, a parcel of trumpery jewelry, or the odds and ends of a twopenny auction, he is equally ready to buy, and equally sanguine of getting a good bargain. He is constantly yielding to some new fancy, and ardently prosecuting some of the countless schemes that swarm in his teeming brain. He frequents company either above or below his own grade, while perhaps he amazes or mortifies his friends by the levity of his manners, if not the levity of his morals. His movements are abrupt, rapid, and unreasonable. He is fond of taking long journeys; and horses suffer under his hands. He sleeps much less than he usually does, and is fond of being up at night, roaming about the house or neighborhood. He is always ready with plausible reasons for his strangest conduct, sufficient to silence, if not to satisfy any troublesome inquirer; while his discourse is entirely free from delusion or obnoxious incoherence.

Then at sec. 151:

The contrast often presented in *moral mania* between the state of the intellectual, and that of the moral faculties, is one of its most striking features. *These patients can reason logically and acutely on any subject within their knowledge, and extol the beauties of virtue, while their conduct is filled with acts of folly and at war with every principle of moral propriety. Their moral nature seems to have undergone an entire revolution.* The sentiments of truth, honor, honesty, benevolence, purity, have given place to mendacity, dishonesty, obscenity and selfishness, and all sense of shame and self-control has disappeared; *while the intellect has lost none of its usual power to argue, convince, please and charm.* We once asked a patient who was constantly doing or saying something to annoy or disturb others, while his intellect was apparently as free from delusion, or any other impairment, as ever, whether in committing his aggressive acts, he felt constrained by an irresistible impulse, contrary to his convictions of right, or was not aware at the moment that he was doing wrong. His reply should sink deep into the hearts of those who legislate for or sit in judgment upon the insane. "I neither acted from any irresistible impulse, nor upon the belief that I was doing right. I knew perfectly well that I was doing wrong, and I might have refrained if I had pleased. I did thus and so, because I loved to do it. It gave me an indescribable pleasure to do wrong." Yet this man, WHEN WELL, is kind and benevolent, and in his whole walk and conversation a model of propriety.

Now, Gentlemen, Dr. RAY, I shall assume throughout my observations, knows what he is writing about. He knew that this man was a fit subject to be put into a lunatic asylum, for he had him as a patient. And yet he says, as Huntington would, if he were on the stand: "Do you know this is wrong?" "I do." "Why

did you do it?" "Because I had an indescribable pleasure from it." Just as a party has an organization leading to a love of cruelty, sometimes carried to insane consequences, particularly developed in homicidal mania.

In nothing, however (Ray proceeds), is the intellectual soundness more strikingly evinced than in the ingenuity with which these persons endeavor to explain the folly and absurdity of their acts, and reconcile them to the ordinary rules of human action. By denying entirely some alleged circumstance in a particular transaction, adding a little to one, and subtracting a little from another, and giving a peculiar coloring to the whole, they will convince the unguarded observer that there is some mistake about the matter; that they acted precisely as any one else would, under similar circumstances; and that they are the victims of misrepresentation and unkindness.

Now he is speaking of a whole class of lunatics, and he gives the result of his observations and reflections at section 242:

It is unquestionably true that a person partially insane may, to a certain extent, be quite rational in his conduct and conversation; BUT THE SAME IS EQUALLY TRUE OF THOSE WHO ARE REGARDED AS WHOLLY INSANE.

Listen to what is the testimony of a man of experience and eminence:

Let a stranger spend an hour or two in the galleries of an asylum, observing the manners of the inmates, and watching them while engaged in their labors, amusements, and conversations, and distinguish, if he can, the wholly from the partially insane. If this limited power of speaking and acting correctly does not invalidate the plea of insanity, as it regards the one class, why should it as it regards the other?

Again, he says, at section 243:

In hospitals for the insane, this phenomenon is sometimes witnessed in a very remarkable degree. There we see men whose understandings are a complete wreck, every day uttering certain mere common places of conversation, performing certain acts, and continuing certain habits, which to a stranger would convey the impression that their mental disorder is very partial in its operation. How often do we see patients in that state of fatuity which is the sequel of long-continued insanity, playing at drafts, or performing on some musical instrument with a very creditable degree of skill! In accordance, therefore, with this law of our intellectual being, an insane person may be quite rational in some respects, simply because his understanding has nothing to do with it. He thinks and acts mechanically. But let him be tried on something that requires a fresh and active exercise of thought—something that requires control of his feelings, and then we shall see how feeble is the dominion of reason.

We have, therefore, evidence from this authority that a man can talk about a commonplace subject, and can proceed like one sane until you come to the particular thing which will develop his insanity.

Now let us consider this standard of knowing right and wrong. I claim that until a man's intellectual nature is wholly subverted and ruined, he always knows the difference between what has been called right and wrong in the community. I read from Wharton & Stillé, at Sec. 60:—

1. THE RIGHT AND WRONG TEST *can never be rightly applied, because it rests in the conscience, which no human eye can penetrate.*

2. *It is useless, even if possible, as almost every case of decided insanity is accompanied with a moral sense.*

My friends will see what the judges say. I am now speaking on the subject of Medical Jurisprudence, and I am showing that the greatest minds, devoted to that branch of human knowledge, objected to the right and wrong test altogether, and for reasons that are thus tersely stated: "Because it rests in the conscience, which no human eye can penetrate."

They say, Gentlemen, that if a party know the difference between right and wrong, and can apply that knowledge to the act he is doing, then he cannot be excused for the commission of the crime. In *Sec.* 160 of Dr. Ray's work, he mentions the case of a lawyer, who was appointed district attorney in one of the South Western States by President Jackson, whom he had previously served in a military capacity.

Towards the meridian of life, his conduct became so disorderly and boisterous, that he was often confined in jails or hospitals for the insane. On one of these occasions he *cut off his nose*, and subsequently came to Boston to have it replaced by Dr. J. Mason Warren, by means of the rhino-plastic operation, which proved quite successful. While in Boston, he made the acquaintance of Dr. Bell, of the McLean Asylum, for the purpose, as he declared, of getting his aid in obtaining redress for the wrongs he had sustained in being placed under guardianship, and confined in jails and hospitals, his object being, not to retaliate, but to protect his future reputation. * * * * * He would often argue thus: "*I protest against being called insane on account of my ideas. For my actions I am accountable. I never yet claimed—I never will claim, immunity as an irresponsible being. I will permit no one to set up such a defence for me. Try me by the laws of the land and the strict rules of evidence, and I will abide by the result as a good citizen; but I must have opportunity to argue my own cause, and examine the witnesses brought against me.*" * * He had often been arrested for assault and battery, but always contrived to beat the complainants, by his familiarity with legal proceedings, and by his quick perception of whatever made for or against himself. * * * * *While in the Pennsylvania Hospital for the insane*, and again, I believe, while in the jail at Washington, he got discharged by means of a writ of *habeas corpus*, which he was allowed to sue out. When thus brought before the court, *he argued his case upon the settled legal doctrine, that an ability to distinguish right from wrong is the sole test of sanity.* Of course no judge did or could hesitate in opinion, that a gentleman who was able to make an elegant and astute argument on the nature, origin, and protection of the rights of the subject, could, by any means, be within the category of individuals intellectually incapable of discriminating between right and wrong. In fact, processes of detention as a lunatic, held, in his case, only until he could get before some tribunal. *And yet when thus turned loose upon society, he was a* PASSIONATE, DANGEROUS LUNATIC. * * His intemperate habits increased, and his delusions became more palpable, yet without affecting his intellectual power. The idea returned, that parts of his face, if removed, would grow again, and he cut out the cicatrix on his forehead, whence the nasal flap had been taken. Fortunately, death stepped in at this point, and removed a man whose fate was so melancholy; for under all the ravages of mental disease, there were traces of noble sentiments and lofty aspirations.

A man not insane if he knows the difference between right and wrong! Why here is a lawyer, arguing in an astute, able and eloquent manner, upon all the relations of right and wrong, before a bench of judges, and yet a confirmed and depraved lunatic.

RAY says, at section 246:

The law asks whether the party knew that the act he committed was wrong, or contrary to law, &c., implying that the reflective powers of such a person are not essentially changed, but only conduct to unsound conclusions. The fact is, however, that seldom, if ever, the insane, before committing acts of violence, do reflect calmly on the subject, view it in its different relations, and thus deliberately form the simple, intelligible conclusion, that the act they meditate is right. The notions which flit through their minds, are too vague and disjointed to be properly called *knowledge*, although they may use that term themselves, in speaking their views. Were it otherwise, why should they, on recovery, regard the whole aspect of the subject in a very different light, and be as much astonished as others to find what they have said and done? The truth is, they act from impulse and sudden suggestions, without being very conscious at the time of what they are doing, or, if they are, without being able to explain their conduct even to their own satisfaction.

This subject is pursued in sections 246 to 249, and also in *Taylor's Medical Jurisprudence*, 553, 557, 581, and 587. It would be altogether beyond proper limits to read, in confirmation of what I state, all the passages I find in the books. I must commend them to the attention of the court, and content myself with saying that they bear out in the fullest manner, every thing I have said upon this subject, and show that you cannot by any possibility, in the judgment of medical men, apply any such test as this sense of right and wrong, to determine the question of insanity. Now, I understand the case of Freeman does not determine any thing adverse to the view that we take, but on the contrary confirms it.

Judge BEARDSLEY says,—

"Where insanity is interposed as a defence to an indictment for an alleged crime, the inquiry is always brought down to the single question of capacity to distinguish between right and wrong at the time when the act was done. In such cases, the jury should be instructed that it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, *as not to know* THE NATURE AND QUALITY *of the act he was doing—or* IF HE DID KNOW, *that he did not know he was doing wrong.*"

This is the language of Judge Beardsley, which I take to be substantially like the proposition I have prepared, viz.: If the jury find that at the time of the perpetration of this act, Huntington had a disease of the brain, which developed itself in the perversion of his moral power, so that he was subjected to a tendency to commit forgery or crime, which tendency was irresistible in its nature, and, under the force of that, he perpetrated the act in question, he is absolved, although he knew that by the statutes of the State of New York forgery was a crime, and might be so punished, and althongh it was, in the nature of things, physically impossible for him to have resisted that tendency. I claim we have shown by proof these influences and these facts operating to establish the thing called insanity, within my definition of it.

First, a hereditary tendency, which all writers agree is a circumstance of great consequence.

Second, Disease of the accused affecting his head.

Third, Peculiar intellectual organization.

Fourth, Peculiar moral organization.

Fifth, An early tendency to destroy.

Sixth, An early tendency to lie.

Seventh, An early tendency to forge.

Eighth, An immoderate use of tobacco.

Ninth, The stimulus of his propensities, resulting from his speculative career.

Tenth, The aggravation of this speculative tendency in him by Belden and the Harbecks, in affording him the unbounded means of exercising this depraved and perverted spirit which actuated him.

Eleventh, That his forgeries were utterly unnecessary for the purposes to which they were applied.

Twelfth, That there was no adequate motive for the perpetration of them. And the absence of sufficient motive is, of course, to be regarded in connection with all other proofs bearing upon this general point.

Thirteenth, That it is not an answer, that he wanted money to spend in extravagance, because he left himself open to be detected at any time.

Fourteenth, There was no accumulation of saving, or preparation to save any of the means which he acquired.

Fifteenth, That there was no apprehension of any danger, as attending his career, all his preparations for life and business being entirely permanent in their character.

Sixteenth, That he made no provision whatever for escape, either before or after his arrest.

Seventeenth, That there was no concealment by him of any of the evidences of his alleged crimes, though he had the opportunity to conceal them.

Eighteenth, That having an opportunity to destroy the evidence that bore directly upon his guilt, he did not avail himself of that opportunity.

The hereditary tendency is recognized as important to show insanity, in *Wharton and Stillé*, *p.* 108, and in *Taylor's Medical Jurisprudence*, *p.* 155. It is proved in this case by Israel Huntington, the father of the accused, who shows that his (the witness's) sister, and a brother of Huntington's mother, are insane. It existed, therefore, in both branches of the family from which the prisoner sprang. How it comes, at what moment it arrives in a human being, and when it ceases, no human being can with certainty say. We can no more account for it than we can tell why the acorn put into the ground produces the majestic oak. We know it does, and we never can know any thing more. Huntington's early history was presented to you by his father;—his propensity to destroy, to tell stories utterly irreconcilable with each other, and without any seeming motive. He mentions

also the remarkable circumstance that the accused altered the family record so as to make himself appear a year younger than he really was. Now, for what purpose he did that I am utterly at a loss to conceive. "Young America" is always in a hurry for majority, and unwilling to rest under the restraint imposed on youth in other lands. A boy of 13 years here is more of a man, at least in his vicious propensities, than one of 20 in the old world, giving each of them the same character, and extent of mental and moral education. When I was a boy we used to turn our collars over, and wear round jackets; but now, striplings dress like men, and swagger about with cigars in their mouths. I have no doubt that Huntington was no exception to these, and what his motive was in making the alteration in the family record I cannot conceive. I suppose one would think that there was in him a proclivity to some development entirely different from that which would be exhibited under ordinary circumstances. His father tells us that from infancy till ten or twelve years, he was the victim of disease; that he had scrofula in the head; that it was difficult to make him understand a moral obligation; and that he had an irresistible desire for destruction; that he was in the habit of lying, and would drive nails into every article that came within his reach.

Drs. Parker and Gilman say that this furnishes aid in determining the question of insanity. My learned friend cross-examined the father to show, that it was not very remarkable that a boy should drive nails into articles and injure them. I agree with him about that. I do not pretend that any one of these little circumstances by itself would prove insanity. When you desire to determine the state of a man's mind, what is the mode of proceeding? You cannot dissect a living man,—you cannot take the brain out of the living skull and look at it. How can you tell that the brain is diseased? If a man go to a physician and say, "I cannot walk,—my leg is lame," the doctor can tell that there is some affection, such as of the nerves or muscles, which impairs his power of locomotion; but, when the mind is diseased and its only manifestations are through the eye, actions, and speech, how are you to determine whether that irregularity results from disease of the mind or not? Simply by comparing what he does with what is done by men in general of the same intelligence under the same circumstances. If you find it to be different, erratic, and peculiar, then there is no conclusion you can come to other than that which the physicians have stated. It is natural for boys to be a little destructive, and the mere fact that he was, would not be regarded as momentous; but I believe that there is no history of Napoleon upon the face of the earth in any language, that does not distinctly mention, among the indications foreshadowing the career of that ambitious hero, that in his boyhood he was accustomed to marshal his school-fellows into armies, and that then with snow balls they would assail each other.

Yet my friend would say that that was a trivial circumstance to mention, considering that all boys snowball each other. Yes, but the fact that the desire exists in other boys, did not the less show that there was a natural tendency in Napoleon to that kind of strife (trifling as it first appeared upon the play-ground) which afterwards manifested itself among the snows of the Alps and the sands of Egypt—the same love of battle, the same readiness to encounter any danger or fatigue for even a moment's triumph. That is my answer to any criticisms upon the deportment of this young man in his childhood.

In 1843 Huntington came to this city, being then 21 years of age, and went into the employment of Mr. S. Humphreys, where he remained until December, 1845. In December,1845, he formed a partnership with Mr. Linsey in Hudson street, in the furniture business, but that resulted in the failure in 1847: an assignment was made to Mr. Randel; and but ten cents on the dollar realized. In 1848 he goes to 17 Wall street. He is then poor, and about that period is assisted by Mr. Clarke. In the spring of 1849 Mr. Randel testifies that Huntington was engaged in endeavoring to get up *The Baltimore Cemetery*, in the fall of the same year, *The Buffalo Cemetery*, *The New York Bay Cemetery*, *and the New York Cemetery*. In 1852 he devised the creation of *The Farmers and Merchants' Bank of Georgetown*, and made arrangements with persons in Wall street to redeem that money for him. I have read to you the deposition of a witness showing that defendant applied to him to furnish a president and cashier for that bank, and he was to give a compensation for their service. I did this to show that at the very time he was engaged in a criminal transaction, he not only did not adopt any means to prevent discovery, but went about to provide witnesses who might prove his criminality. If he wanted to get up a spurious bank, and was a man who never hesitated to commit forgery, what was the difficulty in writing himself the names of John Smith as President, and John Brown as Cashier? Why did he employ some real persons to act in those capacities, who could at any time have come forward upon the stand, and proved the fraudulent transaction? He acted in a precisely similar manner with Barry. Is it in accordance with human actions, when a man is engaged in a crime, to surround himself with witnesses, not confederate or men pledged to silence, or under any obligation not to disclose all he said, but adverse witnesses who may prove his guilt? Is that the way that crime is committed by men of sane minds? Did you ever hear of any such case? After that came the other forgeries in 1852. Then followed the attempt to form the *Citizens' Bank*. The *Steam Laundry* was in 1851. The *Androscoggin Company*, and the two attempts to establish that were in 1853. In March 1856 the forgery on Randel happened. This was the conduct of a man who when he went to California in 1851 owed $140,000.

Your recollection of the testimony must be so fresh that it would be a waste of time to go minutely into its details, and I shall content myself with saying, it is quite apparent that these schemes of Huntington's were such as no truly rational man would embark in, and by no possibility could they have resulted in any thing but loss if either, or all of them, had been carried out upon any principle, suggestion, or rule of government proposed by the accused.

Now, in October, 1855, this man, with a slumbering indictment hanging over him, capable of enforcement at any time—this man, who had been in Wall street, with no capital, property, or employment, bankrupt to the extent of $140,000,—an adventurer in California, returning from that El Dorado penniless,—began his new fortune here, and his mad schemes to enrich others at the expense of all who could be plucked, with the certainty of involving himself in ruin.

Here we introduce into this extraordinary drama—this remarkable passage in the history of New York; this unparalleled incident of criminal trials for forgery—certain other prominent actors,—Belden, and the two Harbecks; and I ask you, as grave and intelligent men, engaged in various departments of life, well acquainted with this city, who feel an interest in its laws and institutions, and desire that justice and right shall prevail whatever may be the consequences, upon what basis did Mr. Huntington establish with either Mr. Belden, or the Harbecks, or all or either of them, a credit which enabled him to have bank accounts to the extent of millions, and live in a style of luxury such as we read about when we were children, in the fairy tale of Aladdin, and never dreamed of seeing illustrated by any such instance as the one afforded here. Upon what basis, for what schemes, and in what enterprises, did Huntington become the financial agent, or confidant, or friend, of millionaires? That is my puzzle in this case! Here is a loan of $21,000 upon a note purporting to be made by Leonard and Hoffman, a firm of lawyers, whose names are placed wrong in the spurious check. It was in truth "Hoffman and Leonard." I do not believe there is a lawyer at this bar, however eminent in character or great in reputation, who could go into Wall street, remain there the entire day, and upon his check alone borrow $21,000. I may be mistaken. I supposed that discounts were confined to and intended for "business men," and that, when a lawyer presented himself, there was a natural abhorrence to have any thing to do with him in money matters. Why a young lawyer, toiling hard for a scanty subsistence, endowed with high talents, but whose modesty is so great as to prevent his emerging from obscurity, for whom there is no clear future, no cheering prospect of elevation, with all the demons of Hell tugging at his heart-strings, with, perhaps, a famishing mother and sister to

sustain, all but dying of starvation,—could not upon his reputation go into Wall street, and get a thousand dollars upon his own note. No! And yet the check of Hoffman and Leonard, without any inquiry whatever, is made the basis of a loan for $21,000, a firm who had no commercial transactions, only existing for legal purposes, and who kept no bank account. I want to know what you understand about this arrangement, under and by which Huntington was possessed of these immense means to flutter for a while a gorgeous butterfly in the sunshine, through wealthy and fashionable parts of this city, and then to fall, as does the butterfly when the season of blight arrives, "never to hope again." I would ask if it be possible that old citizens of New York, like Belden and Harbeck, had not their attention drawn to the circumstance that Huntington, with an indictment hanging over him like the sword of Damocles, bankrupt to the amount of $140,000, with piles of judgments against him, was riding in an equipage inferior to none, going down to Wall street with horses that cost a fortune,—with one pair that cost more money than could alleviate for the next month all the physical suffering that might fall upon the wretched and afflicted in this city,—and living at a rate and style utterly incompatible with any of the ordinary gains of hard industry, or any of the great gains of commercial or business enterprise. Why, where was this all fed? *They say they gave this large credit for seven per cent. per annum!* (Laughter.) I never have witnessed any thing so cool and so deliberate as that statement of Mr. Harbeck, which, put in opposition to the testimony of Halsey, is shown to be utterly and entirely untrue. But no matter; for I am not at this moment on that branch of the case. I find this man, to the knowledge of all New York, had failed in each of his enterprises; and with beggary staring himself and family in the face he steps into Wall street, and is taken possession of by Belden and the Harbecks, and for a brief period commands millions. "Well," say my learned friends, "this only shows that he was guilty of gross ingratitude to his benefactors, and makes deeper and more damning the sin of which he is convicted upon the evidence." Aye!—we will see when I come to speak of that in a moment. For the present, I say, assuming it to be true that Harbeck and Belden dealt with him in relation to business strictly, treated him as business men trade with each other for money, and that they loaned him $21,000, intending to be perfectly secure against any possible loss (of which I see no evidence),—assuming all that, what do you think of the condition and character, intellectual and moral organization, of Huntington if, thus largely endowed with the means of glitter and display, he went on in such a reckless course that it was impossible for him to escape detection, and yet made no provision against detection. Do not defaulters run away, or endeavor to do

so? Do defaulters aid the authorities through their own acts to the detection of their own crimes? And I claim, in connection with what is shown of the organization, early history, and early tendencies of Huntington testified to by his father,—from the result of all his enterprises, and this very operation with Belden and the Harbecks in Wall street, if it were perfectly honest and fair, we have here evidences that his structure was such as to make him entirely different from all ordinary men. It is well enough to have the means to make a display; but if a man rejoices in display, he would desire to insure its continuance. The idea of furnishing a magnificent house in the upper part of the city, providing splendid carriages and superb horses, servants without number, bands of music, midnight revelry, and more gorgeous furniture than ever decorated the Bowery Theater, out steam boats, or eating saloons, subject to be snatched from him in an instant, and then to be entirely at the mercy of the law, without any provision for escape, or any thing saved for the future, is, as I claim it, irreconcilable with any thing we know of in human character or motive.

He forged 1st on Randel, 2d on Thwing, 3d on Harbeck, 4th on Barry, and 5th the papers of 1852. All the forgeries that I have grouped together were attended with this remarkable circumstance they were all discovered and spoken of to Huntington,—he always giving about the same answer, "that there must be some mistake, and that it would all come right," not at all unwilling to be confronted with the persons whose names were forged. I cast back upon this prosecution an argument made by the learned District Attorney. When I was speaking of a certain book that Harbeck destroyed, the District Attorney said, it was not at all unusual for men to destroy the little evidences of past folly; that every man had something in his possession which he wished to remove from sight and memory. That is true. I believe a prudent man who looks at the certainty of death, will take very good care that no papers, nor other things shall survive him, which by possibility could reveal any secret the world was not entitled to learn, and therefore the sooner man destroys what should not reach the eyes of other people, the more credit he deserves. But, Gentlemen, if that be true, why did Huntington keep his forged paper. He did keep it, and it has been produced here. He seemed to hold these evidences of guilt with as much tenacity as one would cling to a lock of hair preserved as a sacred memorial of a departed friend. He retained them, without any earthly motive, so that we are able to produce them to our own great astonishment, though long past date, and discovered soon after they were circulated. A man who writes a foolish thing likes to have it destroyed, and he who commits a criminal act would not keep the papers before him to refresh his recollection, and become evidence against him if he were arrested, but would destroy them at the earliest practicable moment.

another extraordinary feature in this history. Not one lividuals whose names he forged, ever made any crim- int against him. In the name of common sense what does this mean? How is it that a man who has committed forgeries for years, which found their way into Wall street, to various banks and individuals, should not be prosecuted, but be found in the great financial street of New York afterwards, dealing to the extent of millions? I do not wonder that Wall street declares him not to be insane. It would take away their whole reputation if he were crazy (laughter). I do not wonder that they are squeamish about this. How can they explain that this forger, this indicted swindler, this bankrupt to the extent of $140,000, should be admitted on equal terms in social life, and on full equality elsewhere, with wealthy, shrewd men, no complaint being made against him, and no effort to vindicate the law? There is no supposition that justice requires his sacrifice. How is this? There is no charitable interpretation of it unless it be the discovery of something peculiar about the man which rendered him an unfit subject for punishment; because, if they saw he deserved punishment, nothing can justify or excuse their not having brought his acts to the notice of the community, to protect the the public against any loss or wrong resulting from his deeds.

Then, Gentlemen, we proceed to some of his extravagancies and eccentricities. We examined Mr. Burbank, who shows that having one house already furnished, he proceeds to furnish another close at hand. The first was magnificent, the other perhaps a little more so; one of them was intended as a present to a gentleman, but it was declined. The means by which he furnished both these houses, were obtained from forgeries; because there is no evidence that he ever had any genuine paper in his possession. If he had a good piece of collateral in his hand, I never heard it. Well, with these means derived from forgery, he furnishes two houses, concludes to present one to another person (his largest creditor on the old forgeries), then moves out to the other, sells out the first residence, but does not attend the auction. When he took the former, he bought the furniture in it from Burbank for $800, without any estimate. There is one thing to be said about that circumstance, Gentlemen (for I desire to treat the matter frankly), that he had been a furniture dealer, and therefore knew its value. That circumstance would not be so remarkable alone; but it is strange that any sane man, having a house already furnished and established, should want to move out, nothing appearing to show how any advantage would result to him from that proceeding. Then he begins the speculation in horses without rhyme or reason, without understanding their quality or bargaining as to their price, possessing from fifteen to twenty in one year. Then we examine Dr. Simmons, who goes back to an earlier period in the history of this man, at Ger- a letter purporting to be

addressed from a gentleman to Dr. S., requesting the loan of his magnet; and on the Dr. saying that he would take it himself, Huntington laughs, takes the letter back, admits it not to be genuine, and, on being remonstrated with, said that he could see nothing wrong in it. Then comes the testimony of Clarke as to his schemes, his capacity, his extravagance, his peculiarities, his furniture, his silver, and the opinion of the witness called out by the prosecution in the course of his examination, that in his judgment Huntington was a man who did not act upon any known principles regulating human conduct, but was reckless, extravagant, and without due appreciation of any act in which he was engaged. Then we have Mr. Barry as to his servants, his dogs, the new stable, the farm at Yonkers, and this scrip of stock produced here, purporting to be signed by his sons, but which he (the witness) believes was not in their handwriting. Now, dwell for a moment on the purchase of that farm at Yonkers. Huntington bought that only last September, although he had told Randel that he never would live in the country under any circumstances. He paid $20,000 for it in scrip which was genuine, accepted, and no complaint was made. I presume the scrip was above par; at all events there is nothing to show that the person from whom he purchased did not get dollar for dollar. What kind of an arrangement is it to purchase a farm, having a distaste for the country, and make arrangements to establish a permanent habitation, when it was certain that detection would come upon him, and he would have no means of escaping the consequences of his crimes, if indeed he committed any? Mr. William A. Turnure tells us of one instance, where he bought a pair of horses for $400, and when Huntington came to pay for them, he gave $500 to the foreman of the stable, telling him that he might keep the other $100, without any kind of reason for it. This witness further says, that Huntington had six or seven wagons and carriages, and exchanged them in two or three instances; that he kept his own grooms, which was unnecessary, as horses at livery were groomed by men employed in the stables, and he has seen him pull out a roll of money and give ostlers $5 and $10 frequently, and in one instance $20. We then examined Edward Carey, the colored groom in his family. He was driver for Mrs. Huntington from the 7th of May, 1856, and remain until after the arrest. He testified that Huntington owned eighteen horses in all—seven at one time, and four carriages at one time; was liberal with his money, and used to give him (the witness) perquisites; he had seven servants at one time, although his family consisted of but himself, wife, and two children. It seems by this witness that the brass band was only there one night; he, the witness, did not lodge in the house. Carey further stated, that he had taken possession of this new stable in 23d Street, but four days before his arrest; that it would contain four horses, just east of Third Avenue, and had three horses in it when he was arrested.

Edward P. Day testified that he was a schoolfellow of the defendant—occupied the next seat to him. Defendant was (he says) the particular mark of the whole school; he had a sore head and would pull his hair out until he became quite bald in places; he used to say that there was something in his head, and that pulling the hair out relieved him; upon one occasion, when he discovered that one of his schoolfellows had a written excuse, he wrote one, and signed his father's name to it; this was detected; he was punished for it, and he admitted that it was not genuine; but when he returned to his seat, he said it was genuine. On one occasion he wrote a composition, and copied it out of the English Reader; though that was the ordinary book for reading in his class; he borrowed sixpence from a boy, with a promise to pay him $5. I suppose he thought that he was an embryo kind of Harbeck (*laughter*); and the next day, though he said he could not get $5 he brought the lender, and gave him, a handful of ten-cent pieces and coppers. That is not much according to my experience of boys. I do not know how plentiful the ten-cent pieces were in his part of the country; but I think if he had paid back sixpence, it is as much as could be expected from an ordinary schoolboy. He scraped off some gold leaf from his chair, which he said he to sold Dr. Carter for $3 50. When he wanted a piece of paper for any purpose, he would tear a leaf out of any school-book. Although a "shallow" boy, as this witness calls him, heedless and careless, he was very kind-hearted, and would do any thing asked of him; he showed no malice, no guile, no intention to hurt anybody. When they were getting up a debating society, he forged a whole string of boys' names to the programme. What possible motive he could have for that act, except to scribble the names of other people, without any reason, does not appear. These things are different from my school-boy experience. They bear no analogy to any capers performed by the boys in the school I attended; and whether they correspond with your experiences you will judge for yourselves. Look at the character of that boy. Place him before you upon the testimony of Day—puny, sick from his infancy till 12 years old, reckless, but kind-hearted, liberal and generous to a fault, and yet needlessly, without motive, and without any possible advantage, stating falsehoods of the most transparent character, and writing other people's names without any benefit to himself; I think you will at least say that he was very peculiar and very different from ordinary human beings.

We have then the testimony of Huntly, which is important. After 8 o'clock P. M. the Defendant presented himself in his store, and made there purchases of hair-brushes; he gave $1 for one, picked out two others, and said that he would take three, and one comb for $3 50, two more, and two smaller ones; he did not ask the price; he bought some soap without any bartering as to

price, then a papier maché box in the same way, and gave a check upon the Park Bank for $51 04. This is important, for this reason: Huntly had never seen him before, but was so struck with his extraordinary way of doing business, that he took the precaution to send that check the next day to the bank to see if it was good, before the articles were delivered, for the articles were bought "in such a wild way." On the 10th October, 1856, he executed this assignment to Halsey, which was put on record, and became a transfer of record of all his property, including the Yonkers farm, which passed away from Huntington for ever, so that he was acquiring property, and adopting no means to prevent its being reached at the moment when the first disaster overtook him. Then, as to the testimony of Bowyer, who not only procured Mr. Barry's bundle of papers, but the Defendant's books, and received from him in the police-office two of the forged notes complained of here, which had been in the possession of Huntington from the 9th October, at noon, until noon of the 10th October, just as he had two in his hat which he exhibited to Mr. Dodge, letting Mr. Dodge take a copy of them on the 10th October, while he (Defendant) sat in the office quietly smoking a cigar.

Mr. Noyes: That is a mistake.

The District Attorney: The notes were given up upon the first day.

Mr. Brady: The notes of Dodge were given up the first day, though they had been demanded once before. They had been demanded in Belden's office. The point is, that they were in Huntington's possession after the police officer had seen him; and he (Huntington), knowing that he was charged with forgery, that he had $300,000 of forged paper out, and having no reason to know but that they would all be discovered in the morning—keeps them there. He is asked for them in Belden's office, and he does not object to give them up, but, on conference with Belden it was thought better not to do so until he sees Mr. Platt, his lawyer; and after that he surrendered them in the police-office. So they are delivered to Bowyer. If that was all cool, reckless impudence, it never had a parallel in the history of the world. If that was a man of sound mind, thus exposing himself to these dangers, and furnishing the means of his conviction and arrest, it is the most extraordinary exhibition of soundness that I ever heard of in my life, and if you have ever seen an instance like it you will say so by the response that you give in this case. It is proved that there are no books in existence by which this jury can determine the true state of the account between Huntington and Harbeck at any time; and I ask you, Gentlemen, to bear witness, that when I proposed to go into all the transactions between those two men, from the beginning to the end, to show how the balance stood, my learned friends objected, and the Court ruled it out. I make no complaint of that. You know how hard I

pressed it. I was only permitted to begin with the particular transaction, which is the subject of this indictment. "The better part of valor is discretion," and I do not censure my friends. They were very prudent and cautious.

We next examined Mr. Schofield, who was the cashier of Bishop & Co., of 52 Wall street, and produced the two papers which Huntington had filled up in his own handwriting, and forged the name of Bishop & Co. to them; but the signatures bore no resemblance to the signatures of that firm; and we are told by Schofield that he might have had credit in that establishment to the extent of the paper, without committing any forgery whatever.

We then examined Mr. James C. Griffin, as to the checks on the Butchers and Drovers' Bank, dated 1st September, 1852, for $200, and the other for $300. This witness had known the defendant one year and a half; the Butchers and Drovers' Bank was the one in which he (the witness) kept his account; he and defendant had several dealings, amounting to $30,000 or $40,000. He charged Huntington with the forgery, who admitted it; saying he never intended them to go to the bank, and asked witness to assume the checks; which was done. Witness signed his release, and then told Cool and Randel about this, and Mr. Carter. He gave up the checks to Huntington sometime in January, 1855. Huntington paid him $300 since, and he released him. So you perceive, Gentlemen, that Huntington has been going on paying debts from which he was released by the voluntary act of the party,—the payments made out of avails of forgeries. Griffin further states that he had two notes of $400 and $500 each, of Foster & Van Ostrand's, and a check of Brown's for $1000 or $1050—which were forgeries by defendant; and in answer to a question put to him by one of the jurors, he said that these forgeries were bad imitations, and that he had lost in all about $8000 from his transactions with Huntington.

With the single exception, Gentlemen, of the signature of Phelps, Dodge & Co. to the note which is the subject of this indictment, there is no pretense that any of the alleged forgeries resembled the genuine signatures. That has been admitted by my learned friends in the broadest possible way. We examined Mr. George D. Lake, of the firm of Ubsdell, Pierson & Lake (which firm was changed to Ubsdell, Lake & Co.), as to three notes which bore no resemblance to the signature of that firm, and showed that Huntington used their old signature of Ubsdel, Pierson & Lake—that Ubsdell, Pierson & Lake were not known as a firm when Huntington wrote the names. Mr. Bowyer received $563,000 of paper, all defendant's forgeries. The bank account of the defendant in the Bank of the Republic, from May, 1830, to his arrest, was $5,160,500, and in that there was an overdraft of $9,000 not restored.

Now, I believe, Gentlemen, that I have, in a very cursory way, gone over the prominent witnesses who have been examined before you in connection with this subject of insanity, except the medical gentlemen. To recapitulate all the details of the testimony is absurd, for reasons which I have already suggested. I have no doubt you have a distinct recollection of it. What I claim to be proved is contained in the extended question which I put to the medical witnesses upon the stand, more, however, appearing than was embodied in that statement, made before some of the extraordinary developments in this extraordinary case.

Then, Gentlemen, you have presented before you a man, who from his infancy till twelve years of age, was a martyr to sickness, assailed by scrofula, which affected his head,—who developes a wayward disposition, a tendency to state untruths needlessly, to appropriate what he was not entitled to, to destroy what there could be no motive or utility in destroying, and to forge, without any hope or expectation of advantage to himself. You find him as a boy displaying all the eccentricities described by Mr. Day, and as a young man developing himself in the manner related by Dr. Simmons, engaged in scrapes and adventures, from all which it was impossible for him to derive any prosperity. You find him committing forgeries in the most open and undisguised way, taking no means to prevent their discovery, never denying, in a single instance, until you come to this case, except by implication, as it might be, that he did not himself perpetrate the forgeries. The strongest expression you have is, that "there was some mistake about it," and that he would make it all right, and the cool suggestion to one witness, whose name he forged, that he ought to assume the check. He was released from all obligations by his creditors, and you find him struggling along until October, 1855, when he went into Wall street, and commenced operating with Belden and Harbeck, until the transactions increased to millions. We find, suddenly, that one of the instruments which he deposited as collateral security falls due, that he has kept no record of it, and it is presented to the persons whose names are forged upon it. This occurs on the 9th October, 1856, up to which time he is living in extravagance and wastefulness, making no provision to conceal or escape, or to avoid any consequences of his crimes. On the 9th of October, when he is arrested, he is pursuing his business in the usual manner. He is taken to Belden's office, and takes no means to escape, or to conceal any papers which may be evidence of his crime. On the same day he goes to the police office, is bailed, and remains at liberty until the next afternoon.

On the 10th October, about two o'clock, he is again arrested by Mr. Bowyer; asks to go to his office; the request is granted, and he goes there, but gives no special directions, nor makes any special preparations at all; is taken to the police-

office, and then surrendered by Belden and Harbeck, however strong may have been their friendship for or desire to assist him. Then all his property is transferred to Halsey for their benefit, to be equally divided between them; and when he is shut up on the second arrest he is without a cent in the world, to which he can lay any legal or rightful claim. On the 9th November, at night, he had been up at Belden's house. He was there in connection with Harbeck and Halsted. They had an interview with regard to the affairs of Huntington. Huntington, when first arrested, had said that he had received the paper from Fitch, who has not been examined. In the conversation at night, in Mr. Belden's house, they are all on very friendly relations with each other. They take tea together. No kind of notice is given to Mr. Huntington, or insinuation or suggestion, that any thing he says is to be confidential, or so treated. It is an open talk about these forgeries. It was then proposed that they should go and see the persons whose names were forged; Fitch had already sworn in the police-office that he had nothing to do with giving these papers; and yet a sane man, perfectly responsible, and aware of the difference between right and wrong, not content with leaving these Barry orders, so that they might be found, leaving everywhere his foot-tracks, so that no man could fail to follow him in all the details of his forgeries,—attributes his offences to a man who could be called as a witness to prove the statement was untrue! This was not a person absent, and who could not be produced, but one at hand to deny his statement! This strikes me as a most remarkable circumstance in this case.

Now, Gentlemen, of these $560,000 of forgeries, which were detected by Bowyer, $215,000 is found under the control of Belden, and $310,000 under the control of Harbeck. I will not pause to dwell on the most important testimony of Dr. Füllgraf, the defendant's physician, as to the music and other matters detailed in the Doctor's statement. These things are fresh in your recollection. I ask you to bear them in mind. Now, if all these incidents indicate, apart from any testimony of the physicians, that this is a man of sound mind, influenced by ordinary motives, taking ordinary precautions, and doing what the majority of mankind would under the same circumstances,—so be it. But if this, upon the evidence, irrespective of what the physicians say, is an instance of an erratic propensity and vicious inclination to falsehood and forgery, growing out of a disease of the brain developing itself early in childhood,—then upon the principles of law that I have invoked, upon what is said by the writers of medical jurisprudence, this is not a case where the defendant is under any criminal responsibility.

A few words about the testimony of these physicians. We told the prosecution, on the 19th of this month, what our defence

was. We gave them every opportunity to test and investigate it. I think I could have furnished them with the names of some physicians who, for mere notoriety, would have come upon the stand, and testified, honestly enough, to any superficial or peculiar opinion they entertained on the subject of intellect or sanity. We did not agree to allege insanity as a defence without first consulting two physicians of eminent integrity, learning, and experience. Dr. Parker is well known to our community. He is second to none in his profession. Dr. Gilman is a gentleman of the highest standing, who was once physician in our city prison, and has given much attention to the subject of medical jurisprudence. We consulted with them, and we told you, early in this case, that we did not mean to call those medical gentlemen upon the stand, nor even to mention their names, until we had redeemed what might be esteemed an obligation upon our part, in furnishing the proofs warranting the conclusion of insanity. We did not know what was to be developed by his father, his school-fellow Day, or Dr. Simmons; and we had no right to name those medical gentlemen, until wecould make out such a case as would justify the opinion they might give on the stand. We called them; and they were examined. Each of them had an interview with Huntington, such as must take place in order to determine whether a man is insane or not, unless he be a raving, furious madman. Upon that examination, connected with the physical formation of the man and his past history, Drs. Parker and Gilman came to the conclusion that he was insane. Then we read to those witnesses respectively a statement of the results which we say are established by the evidence in the case; and we ask them, What would you conclude? Upon that state of facts Dr. Parker says, "I could explain all that upon the idea of utter recklessness, if it were not connected with what I know of the man, and have heard of the evidence. From all these, I am enabled to say, that the man is not sane." Now, Gentlemen, every book upon medical jurisprudence recognizes the obvious fact that the opinions of scientific witnesses are very important, and ought to be controlling on such a subject, where nothing is against them and they are harmonious with all the testimony. If you went to a man skilled in the medical profession, and you asked his conclusion upon a certain state of facts, and he gave it you, would you set up your own unlearned opinion against it? Is there no value to be attached to the opinions of men who have qualified themselves by ample study, observation, and reflection? Such a course does not prevail in the ordinary affairs of life. If we cannot prove that a man is insane by the testimony of physicians, how can we establish it? Will any one of you, Gentlemen, say that he can take all the testimony in this case; from the birth of Huntington to this time, and reconcile all his acts, as connected with his physical peculiarities in childhood and onward, with the

ordinary or common proceedings of human beings? If so, then you may if you choose disregard the testimony of these physicians. But if otherwise, and if the prosecution have not thought it incumbent on them to call physicians to give counter opinions, then I do not think I claim any thing more than what is right in submitting that Drs. Parker and Gilman's testimony ought to be considered of paramount importance, in determining the case before us. Let me call your attention to the kind of cross-examination to which the Doctor was subjected.

My friend, Mr. Noyes, tried to show that a case of moral depravity would exhibit all that you discovered in the case of Huntington. Would not a man whose heart is depraved (asks my learned friend) manifest the same insensibility to the consequences of crime that Huntington did, in your interview with him? I do not know in what sense my friend used these words; but there is the plainest distinction between the cases put. A sane man is not *insensible* to the consequences. He knows them. He is *indifferent* to the consequences of crime, comparatively sensible of what those consequences are to be, and he yet defies them. He takes the hope of escape, and balances that against the risk of punishment; and that is the reason why all sound men agree that the object of punishment is rather to deter men from committing crime, than to punish them after it is proved. That is the condition of a sane man's mind; but an insane man is not only indifferent to the consequences, but he is insensible to them,—because, though he knows that the law calls forgery or homicide a crime, and will punish it, yet he has not this sound and natural appreciation of the quality of that crime, and of the moral qualities which, in the judgment of society, ought to forbid its perpetration, that would enable him to act as of a free will and a natural judgment. He cannot judge of the effect that crime and its consequences will have upon society. He has a perverted understanding—a perverted will—a perverted moral nature. He is driven by a certain impulse, which is in its nature and tendency irresistible, towards the perpetration of a particular kind of offense. Nobody contends that it is a *physical impossibility* for him to abstain, or that it is a moral impossibility for him to abstain. It is not that the act of killing is an irresistible act; but the tendency to do it, is in its nature irresistible although it may be resisted. That is to say, he is not like an ordinary man, who may have a temptationto commit crime; but who is furnished by nature with counter-vailing influences, which induce him not to do so; so that when he contemplates it, his mind says, "Do not this action: it will be detected; and if it is, you will be degraded, and if proved guilty you will be put in prison." Though there is a temptation to commit the offense, he abstains. But in the case of an insane man, although he knows that the offense is a wrong, and that it may bring disgrace, yet,

in the propensity to do the thing, his will, as it would exist in a sane state, is overborne through the effect of a disease in the brain. Nothing less will excuse him; but that will. If you do not recognize the principle stated by Dr. Parker, then it follows that you would perpetrate this kind of injustice: You would put six men before you, ask each to engage in some muscular exercise, and if one man, disabled in one arm or one leg, could not perform the physical exploits of the other five who were perfect, you would subject him to some punishment for it. The idea of the law of humanity is, that to convict a man of crime, you must find that he has will enough to make him a responsible moral agent. If you find that he is in the condition in which God created him, free from any disease affecting his brain, no matter how small the quality of his intellect, he is responsible. If he commits a crime in a state of drunkenness, that does not excuse him; although in a state of *delirium tremens*, it does excuse him; because the law will not stop to consider, if even a temporary disease of the brain exists, how that has been produced. I do not expect all men to adopt this view. I cannot think so highly of my fellow-creatures as my friend the District Attorney does. The spirit of persecution which has heretofore fired the faggots around him who was guilty of no greater offense than standing by the old religion of his ancestors, and which in the past, has brought to the stake many men who suffered for their religious or political opinions, still exists; and would now be exercised upon many of us, if those who have malice, bigotry, and fanaticism in their hearts were not restrained by the law of the land. I do not expect the whole world to be capable of a high and noble humanity in regard to the thing called crime. I consider, for my humble part, that the estimate of crime, as it exists in this community, and under our law, is often shockingly wrong. I think the idea that eternal disgrace must attach to the poor, starving, houseless wanderer for stealing a man's purse to keep the life that God gave him in his frame, is unjust; if he be not degraded at all, who, in the confidence of business, does that which no law recognizes as a crime—obtains means from his friends on personal faith, and willfully violates the obligation he assumes. Yet, society calls one a crime, and subjects the other to no criminal punishment.

Dr. Gilman's testimony is to the same effect as that of Dr. Parker. Among the suppositions contained in a question put by my learned friend, on the cross-examination of Dr. Parker, was that (testified to by officer Bowyer), of discovering a red spot on the forehead of Huntington, when arrested, where there were drops of perspiration. The doctor said he did not attach much importance to the red spot; that when or how the increased action might occur under such circumstances was a thing he could not explain. As to the little red spot and perspiration,

the man may have been running round that morning; and in my humble judgment, I agree with Dr. Parker about that. I know from my experience that the person most likely to manifest emotion, when charged with crime, is the one who is innocent of it. If you have a child at home, and you charge it with any thing of which it is entirely innocent, what is the expression of its face? If you are innocent of a transaction imputed to you, the astonishment and mortification that you should be suspected of sins that others may believe you committed, would make the blood rush through your system faster than ordinarily; but a man who has commenced early his career of crime, is likely to be cool, because he is prepared not to be much astonished.

I leave for a moment the defence of insanity, and come to a question wholly irrespective of it. I assume for a moment that Huntington is as sane as any person upon this Island—that he was sane in all the transactions you are now investigating; and I propose to see, in that aspect of this case, whether the intent is proved at all, as laid in the indictment, or whether there is any attempt to defraud proved against him, to fulfill the requirements of any rules of law, or any thing that shall be satisfactory to you. What the law requires is, that the intent to defraud should be proved, as laid in the indictment. It is laid in the indictment that the intent was "to defraud William H. Harbeck, and other persons to the jury unknown." I insisted to the Court that there was a variance in this respect, which entitled the defendant to acquittal, because it was proved that the brother of Harbeck was equally interested in this loan. If there were an intent to defraud, it was to defraud both of them, and only those two. There is no proof that there was an intention to defraud other persons. By an express agreement between Harbeck and Huntington, those collaterals were to be kept in Harbeck's possession until there was some default made by Huntington, in observing the conditions of that loan. If Harbeck had, in violation of his contract, passed away those notes, that can show no intent in the accused to defraud others. Now, upon what I have said as to the law, and upon the instructions which his Honor will give, I propose to ask you this question: Is there any proof in this case of any intent on the part of Huntington, sane or insane, to defraud Harbeck in the transaction embodied in this indictment? Upon that subject I have an opinion to express. I say there is none; and I say, further, that there is upon the testimony in this case, conclusive evidence that there was no such intention at all in the mind of Huntington, when he obtained this loan of $21,000. What were the relations between the defendant and Harbeck in the previous transactions? Friendly? Was

[illegible]ces between them? Harbeck would not admit

any credit established by Huntington prior

that he would have lent Huntington

money without securities. I wanted him to say that he had a credit, for reasons that I shall not now discuss. He was dealing with defendant apparently at arm's length. When secured he would loan him money, and when not secured he would not. Take note of that, for it is a momentous fact. When did this loan occur? On the 6th of September, 1856. Made upon what?—a check of Leonard and Hoffman, two lawyers, whose names were transposed, contrary to the character of the firm; Huntington's check for $21,000, payable on the 9th of September, at the Bank of the Republic; and these collaterals, some of which purported to be signed by men of whom Harbeck had heard from Belden, but not one of whom he knew, and not one of the handwritings of whom he knew. No inquiry! no inquiry! no investigation! no hesitation! Harbeck says, in substance, "I did not know that they were lawyers; I did not ask him any thing about it; I knew some of the firms whose names appeared signed to these collaterals; I drew my check for $21,000 and gave it to him; and it was to be a loan, for three days, at 7 per cent., and then it was to be returned." Now if Huntington had no credit with Harbeck, is that the way business is done in Wall street? Is it true that a man can go in with a check of a firm unknown, to a dealer, and collaterals purporting to be signed by men whose handwriting he does not know; and simply upon the strength of those securities, obtain a loan of $21,000? How much expectation you would have, in such a transaction, where there was no credit and no confidence, of obtaining a loan, I leave for you to determine.

I call your Honor's attention and that of the jury to this circumstance. It is proved that there was in the Bank of the Republic, money enough deposited to the credit of Huntington, to have paid the check for $21,000, on 9th September, if it had been presented when it fell due. There cannot be a pretense to the contrary, and the law presumes it until the contrary appears. How are you to arrive at the conclusion that Mr. Huntington intended to cheat Harbeck, in that transaction of borrowing $21,000 upon the 6th of September, payable on the 9th by the check of Huntington, when Huntington had the money in the Bank of the Republic on that day, to pay that check. They could not bring an action against you, in a civil court of justice, on a check, unless it was proved to have been presented. It is an inland bill of exchange, and subject to the same rules. If I give you a check upon a bank for money that you loan me, you can recover it back; but if I give you a check as collateral to the obligation of another man, and I am the drawer of that check, you cannot ordinarily bring an action against the drawer until the check is presented, dishonored, and notice of its dishonor given. Upon the evidence in this case we must say that if the check had been presented upon the 9th of September, it would

have been paid. How can we say otherwise? I asked Harbeck, "did you present that check on the 9th of September?" "No."

Mr. Noyes: His balance, by his cash-book on that day, appears to be $103 00.

Mr. Bryan: On that day he deposited $40,000.

Mr. Brady: I again asked, "Why did you not present that check, Mr. Harbeck?" "Because I did not want the money." "Was there any other reason?" "No other reason." Did you ever present it?', "No, Sir," Did you ever demand payment of it from him?" "No, Sir." "What was the reason." "I did not want the money." "Were there not other transactions between you and Huntington, after that time, and to what amount." "Yes, to a very large amount, and many of the sums were paid."

No mention, in the meantime, ever was made of this loan of $21,000, as between Huntington and Harbeck; and what then? Why the very first moment when a demand is made for any payment or security, as between Huntington and the Beldens, or either of them, and Harbeck, how is it met! *By the transfer of Huntington's whole property to pay their demands, in equal proportions.* Is there any proof that there is not enough for that? Is there any one who says that the property assigned to them will not pay them? We have been trying to get rid of that assignment, for the benefit of the creditors at large. You are asked to infer that Huntington endeavored to defraud Harbeck, by giving him a check which was never presented, never dishonored, without a pretense that it was ever dishonored, or the money demanded from the bank!—and when, after the disaster overtook Huntington, he made an assignment to pay Harbeck and Belden, and there is nothing to show that the property is not sufficient! Even if they show that there was not a balance of $21,000, standing to his credit on that day, what of that? Is there not an agreement frequently with banks, to keep a man's credit good, and allow him to overdraw his account? But Harbeck was satisfied with seven per cent. and did not care how long that loan stood. I ask you was there any intent to defraud? I will presently suggest the nature of this transaction, and what it all means. Is there any witness who proves any intent to defraud, with the exception of Harbeck? I asked Harbeck "Was there not a book called 'special,' used for entering loans made at a greater interest than seven per cent?" and he said, "No," and utterly denied that there ever was such a book. "Was there not a book to enter the loans to Huntington?" "I destroyed it." "Why?" "I did not want people to see how much money I had let him have." "Ah! Mr. Harbeck, do strangers look at your book without your permission?" "I did not want to have this book looking me in the face, and telling me how much I had lost." A kind of specter grim,—a death's head! "That is the reason?" "Yes." "And the only reason?" "Yes." As if ever since the world be-

gan, a man forgot the amount of money he had lost by forgeries! The destruction of the book did not erase these transactions from the tablet of Harbeck's mind. Is there one man upon the Jury who believes that Harbeck intended to tell the truth, when he stated that was his only motive for destroying that book? Silly, ridiculous, and preposterous! Because the evidence of the amount of obligations remained in his memory and in other books than the one destroyed. Does he want you to believe that although an assignment was made to Halsey, on the 10th of October, preferring Harbeck and the Beldens over all other persons, they cannot tell you how much they are to get out of that assignment? Is that the way men do business? Do you believe that? We suspect that these were usurious loans, and that there was some kind of arrangement, by which they had on foot one of the most stupendous projects ever devised in a community, for the sudden accumulation of wealth. We told you of it in the opening. We think that this was not an ordinary lending of money, at seven per cent. I went on asking questions of Harbeck until all were tired; and using every species of word by which I could denominate the transaction as to the actual interest or compensation. I asked him was there any agreement, understanding, hint, suggestion, or insinuation, which was intended to convey the idea that he should receive, directly or indirectly, more than seven per cent. "No." "And you had no expectation of doing so?" "No." "And if you had received more than seven per cent. you would have been surprised?" "Yes," and *I would have returned it.*

Gentlemen, that undiscovered country "from whose bourne no traveler returns," is not more remote or distant than the pocket of Harbeck, whence would be restored on mere business transactions, any of the interest he received. I should as soon think that the grave would give back its dead before the time appointed, as expect Mr. Harbeck to return any of the thousands upon thousands that he must have received from Huntington, when Huntington used his funds in Wall Street, with the extinguisher of Harbeck held over him, ready at any moment to quench him, as at last it did. No matter what were Huntington's transactions in Wall street; as soon as he was arrested, they say,—"You are our dear friend, Huntington,—we believe your story. We are convinced that you are innocent, and we'll bail you." They then get an assignment; and he goes back into custody. I do not wonder that my friends on the other side did not wish us to go into all these transactions; that Harbeck destroyed the book containing a record of them, and then came upon the stand to swear (much as I regret that any thing should stimulate him to that act), that he did not receive more than seven per cent., when Halsey, his own book-keeper, flatly contradicts him, and shows that the transactions between Huntington and Harbeck had been of such a character that they feared an allegation

of co-partnership would grow out of it; and that they saw Mr. Gerard and consulted him as to how they should avoid the danger. His advice led to the keeping of the books, simply showing loans of seven per cent. And Harbeck sticks to the seven per cent.,—is screwed down to the seven per cent.,—is riveted to the seven per cent.,—and it is not in the power of all the Sampsons to remove him one sixteenth part of a hair's breadth from this seven per cent.! But Halsey let out the secret of the co-partnership; and these collaterals were a very convenient process,—so that when the destruction came, and Harbeck might be charged with giving all this money to Huntington, he would reply, "Look at these collaterals, Gentlemen, all at seven per cent." I had tried by every means to get from Harbeck what the real rate was, but without effect. When Halsey came upon the stand, he gave a definition which, philologically, is very consoling to me. He calls the moneys and considerations for the loans,—"PRESENTS!" It was not the habit to pay any thing for interest, but to give sums of money, and a horse on one occasion, as "PRESENTS." Why, Gentlemen, a sickly mole, with a disease that debilitated its optic nerves (if it have any), would see through so shallow a device as that!

We have this lamentable spectacle then presented: we have Mr. Harbeck committing an offense infinitely more dangerous to society than all the forgeries Huntington could perpetrate, if he lived to be five hundred years old. And yet Mr. Harbeck walks out of court one of the aggrieved parties, free to enjoy the pleasures of this festive time, free to have liberty and happiness, and to resume all his occupations in life; while Huntington, sacrificed, good for nothing any more,—all his means swept into the possession of an assignee, to be divided between Harbeck and Belden,—marches into the State-prison; and the majesty of the law is vindicated! the morals of the community are upheld! Wall street is saved from scoundrelism, and crime, and vice! So stands this case.

Now, Gentlemen of the Jury, if I do Mr. Harbeck any injustice, in asking you to determine, upon the testimony of his own clerk, that he has deliberately concealed and willfully falsified the true facts of this case, and you tell me when this case is through, that I have been mistaken in the view I have formed, I will make any atonement to him that you suggest shall be proper; and I say that, because I never make an accusation of perjury against a man in a court of justice except where I know the proof upon which that crime may be established exists, as it does in this case, within the sound of my voice almost, and certainly in this city. If Huntington could go upon that stand as a witness, I want to ask my friends what would save Mr. Harbeck from the conviction of willful, wicked and corrupt perjury? What technical suggestion,—what notion, arising out of human charity or mercy, could prevent it? If there be any, I beg and entreat you

to discover and apply it. Heaven forbid that any such thing should happen in a court of justice, as that any man, with or without character, of respectable exterior or otherwise, should be branded by a jury as having perpetrated the most deliberate and wicked of crimes, except upon reasons creating a necessity from which they saw no escape! I see a deliberate attempt on the part of Harbeck, to keep from you all the facts which my associate elicited from Halsey by a species of effort, labor, and toil, almost unparalleled in a court of justice. Unyielding, stubborn, and reluctant were all the answers of Halsey. Why, the gush of water from the rock of the wilderness, was scarcely a greater miracle than the issuing of limpid truth from Halsey, under the pressure of necessity. We found out what? Why, obviously that this was no such case as Huntington going into Wall street to borrow money at a fair percentage, for purposes of regular business; but a joint traffic and a joint trading between Huntington and Harbeck (to say nothing of Belden), with a view to their equal benefit; but keeping up in books (after legal advice had been given), the appearance of regular transactions, at seven per cent. I assume upon the evidence that the true course of dealings between Harbeck and Huntington has not yet been disclosed to you,—that you have not yet been apprised of the scheme which existed to make money,—that you have not been informed why Harbeck was willing that this state of affluent splendor on the part of Huntington should go on,—and that he should have sixteen or eighteen horses, and numerous carriages, a long retinue of servants, and bands of music in his house. But, Gentlemen, it often happens in the administration of justice that jurors have to apply to the investigation of a cause a power and a process which I may be excused for calling comparative mental anatomy. As the great Cuvier in his prosecution of comparative anatomy in physical things, could from one little bone furnished to him, by the aid of induction and science, resolve what kind of an animal it had belonged to,—its shape, its actions, and its habits,—so, in the affairs of life, in the jury-box, or out of it, a few little facts sometimes furnish such a clue to the real nature of a transaction, that whatever a witness may testify to, truth, in virtue of its inherent power to enforce itself everywhere, against the evil schemes and machinations of men, asserts its influence against prejudice, cunning, deceit and duplicity, and reveals where the justice of the case may be found. I ask you, as business men, if it be the custom in Wall street to loan thousands and thousands of dollars to a person, without any kind of inquiry, who is leading a fast life, and rushing into every kind of extravagance? Could there be any concealment from these men of the course of life of one who was their associate, and between whom and themselves hospitalities were exchanged?

Why, says the learned gentleman, what an absurd thing to suppose the Harbecks would deal with Huntington and take any

paper from him, unless they supposed it to be perfectly genuine, when the evidence is here that one of these very securities, which upon any such theory as that they would have received with knowledge that it was not good for any thing, was presented to Phelps, Dodge & Co. for payment? I admit that that looks a little strange. One of the clerks of the establishment took that one note on a loan of Mr. Belden's, of which we have not the details, up to Phelps, Dodge & Co. and presented it, and when Dodge went down there, Huntington is immediately sent for; and he comes in and has a conversation with Belden; and that is all we know about that, except that Dodge goes down to the police-office.

How is it, Gentlemen, that the Harbecks keep this loan of $21,000 alive, without any inquiry, or demand, or expression of desire to have it paid, from the 6th of Sept. to the 9th of October? It does seem to me that we have revealed here a course of dealing by these gentlemen, for their common benefit, with a perfect and full understanding that they were to share equally in the results of all moneyed transactions which transpired between them, and that upon any and every hypothesis of this case furnished by the evidence, there was no intention ever entertained by Huntington that he should defraud either of the Harbecks, or that any harm should come to them by reason of the transactions in which he was interested. There is one thing bearing upon this, of which you are not to lose sight. You will remember that there was in the office of Mr. Huntington, Mr. Barker, who is a brother-in-law of the Harbecks. He knew all about the transactions of Huntington, was close by him all the time, and could have given Harbeck any information he required in regard to the progress of Huntington's affairs. Huntington had a boy named *Thomas* in that office, who made entries in the cash account. He has not been produced. By the suggestion of Mr. Bowyer he was taken into the employment of the prosecution the moment that Huntington was arrested. They had in Belden's office a man of the name of *Mahler*, who has disappeared and has not been produced. Not one of these facts is explained on their part. Mr. Harbeck has been unfortunately taken ill; but Mr. Belden, who has been a constant and attentive witness of this trial, and who is now seated with the gentleman for the prosecution, has not been called. After my friends knew how anxious we were to have the Belden indictment tried first, they might, with no impropriety, have called upon Mr. Belden to throw some light upon these transactions, involved in great mystery to say the least of it; and the more especially because if Belden's interests were distinct from Harbeck's, how does it happen that in the assignment of the 10th of October, when he gives up all his property to Halsey, for the benefit of Belden and Harbeck, they are to share exactly half and half in the estate? Is that usual with business men? One has a debt of $215,000, and the other $310,000, yet the assignment says, "Take my property and divide it equally." Nothing is said about the amount of the

indebtedness, or the amount of the property,—nothing suggested in the way of explanation in regard to either. The whole case is permitted to rest upon the testimony of Mr. Harbeck, with this appalling rule of law looking my learned friends in the face, founded upon the Latin maxim, "*falsus in uno, falsus in omnibus*"—a rule of law which, for the purposes of public justice, demands that when you detect any witness in a court of justice willfully stating before a jury what he knows to be untrue, it is matter of duty, according to law, to throw aside all his statements. The law supposes that an indisposition to tell the whole truth, especially in a case of any magnitude, like this, disqualifies a witness from receiving any confidence at all from the hands of the jury. If they had any motives of delicacy prohibiting them from examining Mr. Belden, Mr. Mahler might have given them some aid. It was quite important for them to have had him in attendance, and us. Barker was in such a close relation to them, that when Huntington's house was taken possession of up town, he was the person placed as guardian of it; yet he is not produced. The case is left entirely stripped of any explanation which they might have thrown upon it, to inform you as to the true nature of the transactions between Harbeck and Huntington. And if it be said, in answer to all this, "We do not care whether he intended to defraud Harbeck or not;—it is enough for us that this is forged paper, and that he knew it was forged. By possibility it might injure some one,"—I answer: In the first place, the law requires that you must prove the intent as laid in the indictment; and, secondly, if you strike out the testimony of Harbeck, then the great basis of the transaction, said to have resulted in fraud, is removed entirely and for ever from the judgment of this jury.

Gentlemen, I submit to you, upon the evidence, that this was a joint prosecution of a scheme of money-making, by Belden, Harbeck and Huntington;—that Huntington was the agent and instrument, by means of whom the moneys they furnished him, merely as their clerk and servant, were to be used for their common benefit, but with an obligation recognized by Huntington and for ever impressed upon him, that so long as his prosperity continued it was all well, and when he became unable to meet his engagements, he was to make provision by assignment, so that they could be indemnified. I utterly deny that there is any thing here to warrant the idea that Huntington had the least design to injure Harbeck, or anybody else, by the utterance of this note in the indictment; and if it be true that *intention* is the essence of the crime, I do not see how my learned friends, except upon some technical notion of the law, can with any confidence claim that this is a case in which, as to that branch of it, there should be a conviction.

Now, Gentlemen, one of my friends on the other side will address you, certainly with ability, and perhaps with more brevity than I. I am perfectly conscious that to compress and present

this case in all its aspects, within the limits even of the large amount of time I have consumed, is next to impossible. There are a great many topics suggested to me by my learned associate, and many connected with my own reflections, which I have left unnoticed, or passed over with slight comment. We have devoted our industry to this case—my learned associate in a much larger degree than I—with a view to present to a jury unquestionably honest and reliable testimony, affecting the whole history of this transaction. We have, in connection with the defence of insanity, put before this jury, from the lips of witnesses whom you cannot discredit, facts in reference to which we took the advice of two men most eminent in the medical profession, before we would assume the responsibility of presenting the defence at all. We did this in opposition to the remonstrances of the accused himself. His reasons were, that it would bring a stigma upon his family; prevent his going into business again, forsooth! if he should be discharged by the verdict of a jury; and that all the prosecution had proved was reconcilable with his innocence! He seems to have had the idea in his mind that it was better to take the chance of acquittal or conviction, upon the case of the prosecution alone, without introducing a single witness, than to permit a presentation of facts which would show him innocent of any bad intent, and save his reputation! What kind of a view of human life is that? What kind of a view of duty to one's self is that? It placed my learned associate and myself in a disagreeable position. We knew that this was a pioneer indictment, and its fate would probably dispose of the other twenty-six. We knew that the moment this defence of insanity came to be stated, we would be met by the comments and criticism which invariably attend any such effort. I knew perfectly well that as regards my learned associate who now, for the first time, appears in a criminal cause of any great importance in this city (though he has acted in them in another part of the State)—any distinction to be made between him and my humble self respecting the parts we take,—any censure or odium which might fall upon the defence, would descend, where I invite it to come, chiefly upon me; and I am willing to take the whole responsibility of it in every form and sense in which the word responsibility can be understood or applied. I have been educated to the legal profession under no circumstances of great advantage; and, unfortunately for myself, imbibed an ambition in my boyhood to be present at some time as counsel, to defend human liberty and human life against a public accusation for crime. Any desire I may have had in that respect has been long ago gratified, and there is no more pleasure for me now in a triumph than there is mortification in a defeat, if I feel that I have discharged my duty, however imperfectly, according to the best of the capacity with which I am endowed. I submit to you that we have presented as strong a case, justifying the opinion of eminent medical men in regard to

the insanity of this accused, as you can find in any book, where the defendant was not a violent madman. How it is to be overcome, I shall wait with all patience, curiosity, and attention to hear. But if the gentlemen of the jury shall say, notwithstanding all these exhibitions of proof and authority, that they believe Huntington was perfectly sane in the transactions he had with Harbeck, I submit that there is an utter absence of any intent to defraud either Harbeck or anybody else. And now I intrust his fate into your hands. I am not unwilling that crime should be punished. I make no display of my desire to have justice effectually administered; but it is most natural that I should be happy if, in my native city, something should at times be rightly done to uphold the majesty of the law and rescue our municipal reputation from the reproaches too often most justly cast upon it. It is fitting, when a proper occasion arises, that the avenging sword should fall upon the culprit. But it too often happens that when the arm of justice is upreared to inflict a blow in seeming vindication of the law, against the real or apparent transgressor, the motive power to direct the punishment is not the desire for a pure administration of right, but something that emanates from private motives, through private desire for private ends. It may be most important to some that the lips of Huntington should be closed for ever in regard to transactions about which he knows all. Of this I know nothing, and of this I would have said nothing, if Mr. Harbeck (who, I understand, is a merchant of influence and wealth) had come upon this stand and openly disclosed all the facts connected with his transaction, so far as the Court would permit, and then impressed you with a sense of his propriety and truth. To me the whole affair is enshrouded in mystery. Gloom and darkness overhang this case, encompassing it all round; in struggling through which I find very great embarrassment. I earnestly desire the Jury to see that when some hand is protruded out of this cloud, and therein gleams a weapon, said to be that of the law, prepared to deal a judgment upon a criminal, it comes accredited with some of the sanctions that ought to attend the ministration of public justice, and is not used to sacrifice a citizen from concealed and wicked motives, not fully to be comprehended, because of the disguise, and equivocation, and falsehood, with which the transaction is surrounded. If the Jury do this, and they come to the conclusion that it will be of no benefit to this community, in view of all these circumstances, that Huntington be sent to the State-prison—that ignominy fall upon his family, and eternal destruction upon himself;—if they decide that it will not be a violation of the law, nor a moral impropriety to let the last hours of his aged father be undisturbed by the reflection that his son is encountering a felon's doom,—I believe the general sentiment of this community will pronounce, that there is more reason to rejoice over that result, than in the sacrifice of twenty forgers, however guilty. But

whatever may be the issue of this trial, whether you convict or acquit, I rejoice that there has been an exposure of the means by which such a man as Huntington, insane and innocent or sane and guilty, who has neither credit nor property, nor the just right to possess one or the other, can live in magnificence and luxury, while those who toil till the sweat of agony pours from their brows, are held, through false influences of society, in undeserved inferiority ; and the name, like the doom of poverty, seems to have ever attending it equal contempt and suffering.

At the conclusion of this address there was much loud applause from the crowd of spectators in court, during which the officers commanded silence, and—

The District Attorney rose and called on the Court to direct the officers to arrest the persons who had been guilty of such indecorous conduct.

The Court, addressing the spectators, hoped that similar manifestations would be avoided. Should they be repeated, he would direct the officers to bring the offenders before him.

It was now 6 P. M.; and a recess was here taken for half an hour. On the re-assembling of the court, Mr. Noyes commenced his summing-up for the prosecution.

From the report of the N. Y. Daily Times of Dec. 30, 1856.

At the commencement of the trial of Huntington, about two weeks ago, the public excitement was so great as to absorb every other topic of the public comment. This was all very well for a day or two, but people soon began to find the testimony for the prosecution rather dull; and, in the course of a few days more, the affair was considered to have become decidedly uninviting. Public interest and curiosity, in the course of a week, passed through all the gradations between universal excitement and general indifference. With the revelation, however, of the nature of the defence, a sort of retro-action occurred in popular feeling, which has gained in intensity as the defence has proceeded, and may now be regarded as having culminated. The attendance of spectators at the Court to-day, to hear Mr. Brady's closing speech in behalf of the prisoner, may be well characterized as unprecedented. In the General Sessions Court-room, the crowd was so great that late comers congratulated themselves if they succeeded in gaining admission, or if, having obtained admission, they succeeded in obtaining comfortable standing room. So vast an assemblage as sought an entrance it would have been utterly impossible to accommodate in the Sessions room, and accordingly the adjoining room, which communicates with it by means of folding-doors, was thrown open for the nonce, and was soon largely occupied. On the bench with the Judge, and elsewhere throughout the Court room, were several ladies. The bar was crowded with lawyers. The friends of the prisoner sat by his counsel, and Huntington himself, the observed of all observers, occupied his old place, about a couple of paces behind the lawyers' table, and close by the railing which incloses the desks of the Clerk of the Court and the prosecuting counsel. He preserved the same impassive look, the same cold, unmeaning stare, the same general indifference he has invariably manifested throughout the trial. To-day, it was said by some, that he exhibited on several occasions a degree of feeling, to which all outward appearances would argue him to be a stranger. Whilst his counsel was piling up the premises on which he meant to base his conclusion as to the prisoner's insanity, Huntington, we are told, indicated his opinion of the job, by repeatedly observing to himself, in a voice audible to those in his immediate vicinity, "A splendid farce this!" Among the most attentive of the spectators was Gen. Sam Houston, of Texas, who entered the court after Mr. Brady had commenced his speech, and was accommodated with a seat beside the Judge, where he remained till the intermission, which occurred at one and a half o'clock.

SPEECH OF MR. NOYES

ON SUMMING UP FOR THE PROSECUTION.

Gentlemen of the Jury:

I was disposed to regard the applause which was manifested at the close of my learned friend's speech rather as complimentary to him, and as expressive of kind feelings towards him, upon the announcement which has been made here, that he was about to retire from practice in criminal cases, than as any expression of sympathy with the accused in this case, much less any expression of sympathy with crime. That it was in itself exceedingly improper in a court of justice, those who indulged in it must now be satisfied. If it sprung from the kind feeling of which I have spoken, I have no complaint to make about it. If it did spring, however, from sympathy with guilt, there are no expressions of detestation in our language sufficient to characterize the abhorrence in which that practice should be held. You, Gentlemen, are here for the purpose of determining the guilt or innocence of this defendant upon the evidence in the case, and aside from any feeling of your own or of the public; and I regret as much as my learned friend upon the other side, that an apology should be furnished by the press for a suggestion to you, that there was any attempt to influence you, or that you were in danger of being or might be improperly influenced in coming to the conclusion at which you are to arrive. So far, however, from the remarks to which my friend has taken exception, being in any degree injurious to the defendant, they have doubtless been serviceable. Whether you have read them or not I do not know, nor shall I now inquire; but they have furnished a topic of eloquent declamation, in which the counsel for the prisoner has indulged, without which some portion of his effort might have been stayed. He could not believe, nor do any of us believe, that the opinions which have been expressed will operate, in the slightest degree, if you have read or heard them, to influence the solemn oath which you have made, to give this man "a true deliverance" according to his guilt or innocence. I must, however, remark that the censures which have been thrown upon the editors of public journals seem to me to be entirely unfounded. They were not intended for the jury; they did not originate with, and had no sanction from the prosecution. They were made undoubtedly in the discharge of a high public duty, which these editors supposed devolved upon them, to keep the public advised of important

public affairs, in which all have an interest, and especially in reference to the progress of this trial and the developments which it has made; and it is only in accordance with what is a provision of our constitution and a principle of our fundamental law—that all trials shall be public, so that the citizen should never be oppressed by private judicial persecution.

Whether the dangers which have been suggested, as referred to in the articles which my learned friend has quoted (and about which I should not have said a word, if he had not introduced them here)—whether the apprehensions which have been indulged, as contained in those articles, in reference to the result of this trial, are to be verified, your verdict must determine; and I am content to dispose of this topic, and with it others which I have in my mind, by asking you to lay aside every thing of the sort—to consider yourselves as having only attended to the evidence alone, irrespective of every other consideration. I feel it my duty, too, as representing the prosecution, to say to you that you are to apply, in this case, the principle which prevails in every criminal case, that if you have a reasonable doubt, founded upon the evidence, of this prisoner's guilt, you are bound to give him the benefit of that doubt.

I shall proceed to state to you, as briefly as I may be able, the views which have occurred to me, as counsel for the prosecution, upon the detailed evidence which has been given; and I shall not feel myself at liberty to exercise the zeal or the effort which in a civil case, I might feel myself bound to exert, in discharge of my duty as counsel. I hold that in a case of this sort, he who represents the prosecution, shall make a plain, candid, honest statement of the case upon the evidence, as it is presented to him, and do nothing which might have a tendency unduly to prejudice the accused. I shall lay aside, so far as I am capable of doing, the interest which I have felt in the parties for whom I was retained in the civil suits growing out of these forgeries—desirous of representing here only the public. You are aware that it is not a very common thing for private counsel to appear in public prosecutions. In England criminal prosecutions are conducted entirely by the parties aggrieved, and generally at their own expense—in rare cases public counsel or official personages being employed. Here it is entrusted to a public functionary, the District Attorney. But from the importance of this case, the large interests involved in it, and the immense labor which it of course throws upon the counsel, it was deemed proper and expedient that some one should be associated with the prosecution; and you will see the propriety of this, when you remember that we have been here now two weeks, hearing this case, and are to commence a third before it shall be concluded. There are one or two matters, having, in my judgment, no immediate reference to the question of guilt or innocence, in this case, which I must dispose of before I go to the examination of the evidence bearing upon that question.

The first is, the noise which has been made about the usury laws; the attempt which has been so elaborately carried through this whole case, by both counsel upon the other side, to prejudice the prosecution by the suggestion that Harbeck & Co., and Belden, were usurers. Now, Gentlemen, I am not going to make any apology for the violation of positive law. I believe in the principle stated by the great Roman orator, that the laws of the land should be always obeyed, until they are repealed or altered; but you cannot close your eyes to the fact that, in a commercial community like our own, the taking of more than seven per cent. interest, although it is prohibited by law, is almost as common as money transactions. I do notbelieve, as my learned friend has stated, that he considers there is any thing immoral in the taking of more than seven per cent. Indeed, in all commercial communities, especially at the present day, the call is loud and long for a repeal of the regulations upon the interest of money. It is so in this commercial metropolis, and it is so in every commercial town in the State. It has prevailed to such an extent in England that, on the 1st of August, 1854, every law prohibiting the taking of more than lawful interest (three or four per cent. according to the English usury laws), has been repealed. The statute of 17 and 18. Vic. chap. 90, abolishes all the usury laws in England, so that there is now no such thing there as excessive interest. It is thrown open, just as the traffic in every thing else, so that he who loans his money may bargain for the rate and the transaction is legal. It is so in this State, to a limited extent; because corporations now, and for five or six years past, are at liberty to pay upon a loan of money, any sum that may be agreed upon; and there is a positive law prohibiting their setting up the defence of usury.

This is all introductory, undoubtedly, to a liberal commerce in money, so that, when the interior of our State shall become in some sense more commercial, the same rule which prevails in the city—the same feeling which prevails here, will prevail there, and there will be no such thing as a usury law in the State of New York. In short, then, Gentlemen, the practice about which my learned friends upon the other side have been so eloquent, involves nothing immoral; nothing which is a crime in itself. And although men who take more than seven per cent. are unusually sensitive, because they are liable to indictment, and because the contract which they make may be repudiated, and they may lose their money; although they may exhibit that sensibility when they come into court to testify about those transactions, yet it is nothing in the world but a sensitiveness growing out of their pecuniary interests, and not a matter affecting their morals, their integrity, or their truth. So much, then, for the fact of usury, if there was any in this case.

Another consideration connected with it is, that it is contended upon the other side, on behalf of the prisoner, in substance,

that he had a right to forge and alter (for, of course, if he had a right to alter, he had a right to forge) forged papers in a usury transaction; and my learned friend put an instance. He said that if two burglars met in reference to a division of their spoil (I do not remember the phrase which he used—it was entirely new to me, and where my learned friend acquired it, I am unable to say)—that if two burglars met for the division of the spoil, and one proposed to keep the silver, and uttered a counterfeit note as equivalent therefor, he could not be punished for forgery. I do not see but, by the same reasoning, if they quarreled over the division of the spoil and one killed the other, that it would not be murder; or if after the spoil was divided he was not satisfied, and set fire to the dwelling of the other, and consumed it, that he would be guiltless of arson. Now, may it please your Honor, the rule is, in cases to which I have before referred, that the uttering of counterfeit notes at a gaming table is just as much a criminal offense as uttering them elsewhere, because there is a criminal intention. That is decided in Thatcher's criminal cases, p. 47; also in the State of South Carolina, nearly fifty years ago, in the case of *Belcher*, 1st *Brevard's* R. 482, and these authorities are continued and cited with approbation in all recent books upon criminal evidence. So in the case of *The King against Holden*, *Russ & Ryan*, p. 154, it is decided that where a detective officer (like our friend Bowyer), employed for the purpose of detecting persons passing counterfeit forged notes, went to one who was a dealer, and bought them, as if he were a person in concert with him, to give them circulation, although the transaction was one not intended to be real on the part of the officer, but to expose the guilty person, yet that was held to be an uttering within the law of forgery. It was the same, so far back as the case of Leech, decided before the beginning of the present century, to the same effect. So that, no matter whether the transaction was one which could not be enforced because of its being within the usury laws, that has nothing to do with this question.

But all the transactions that are within the usury laws, are not incapable of being enforced. Our statute only makes usury transactions void as between a borrower and a lender, and persons claiming in privity with and under the borrower. A recent case has been decided by the Court of Appeals upon this subject, involving a large amount of money. It was the case of *Schermerhorn* vs. *The Trustees of the American Life and Trust Co.* Schermerhorn made an usurious agreement with the Company. He went into bankruptcy, assigned all his property under the United States Bankrupt Laws. It went to his assignee, his residuary interest in this property, which he had mortgaged in this usurious transaction with the Trust Company. His residuary interest was sold by the assignee; and Schermerhorn himself purchased it, putting himself, so far as he could, in his original condition as borrower.

He then filed his bill to set aside the mortgage or trust deed which he had given, on the ground of usury; and the Court of Appeals held that he could not do it; that he came in, not as Schermerhorn, the original borrower, but as Schermerhorn, the purchaser from the assignee in bankruptcy; that the privity between the first Schermerhorn and the second Schermerhorn was cut off;—and they made him pay the amount which he had borrowed, deducting the excess of interest, amounting to some $150,000. So much, then, for the proposition that forgery is lawful in all the usurious transactions that have been in Wall street or elsewhere; the monstrous proposition that, because one offense (an offense created by statute,) is committed, another offense may be committed at the same time; and if that be the rule, every one of us must wish that the usury laws should be repealed at once, because they would be the greatest incentive and inducement to forgery. I hope my learned friend had not given any reflection to the consequences of the monstrous doctrine which he advocated.

There is one other matter to which I must allude; perhaps too, I shall show, contrary to what has been urged, and about which so much has been said, that there were no usury transactions in the case. If Huntington was to be believed—if he told his victims the truth, whether those victims are Bishop & Co., Harbeck & Co., or Belden & Co., there was no usury in the case; and everything that has been said here condemnatory of Mr. Harbeck, all the imputations which have been cast upon him (and they are all concentrated in the one enormous, flagrant, utterly unjustifiable charge of perjury), all the reflections cast upon him, based upon such a charge, according to the evidence in this case are utterly groundless, if Huntington ever was capable, whether sane or insane, of telling the truth. Again, you may have been surprised that Huntington, (I have indeed been surprised myself), with so many apparent crimes upon his head since he came to New York, should have escaped trial, and should have had such large impunity. To what is it attributable? It is a very startling fact in the history of New York, that the knowledge of repeated forgeries may rest in the breast even in Wall Street, in West Street, and all over the city, for years, and no suggestion be made to the public authorities. It indicates a want of attention to the moral and pecuniary interests of this community, on the part of those persons at least, of the most extraordinary character. Why is it? It is because prosecutors are liable to the fierce examinations, to the insolent questions, to the unfair insinuations, to the opprobrious epithets and infamous charges, to which they are subjected in a court of justice, when they prosecute? If it be not owing to that, Gentlemen, the tendency of such a course of conduct on the part of those who represent the accused, who act by his authority and speak his language is precisely to that result; and if gentlemen who have suffered pecuniary loss, to large or smaller amounts,

when they go to the public authorities and complain of their wrongs, and come into court to give evidence concerning them, are to be treated as Mr. Harbeck has been in this case, you will find the example of silence on the part of those who know forgeries, as disclosed in this case, followed, until the criminal courts might as well be closed. Let us see where was the necessity, in this prosecution or in this defence, of assailing Mr. Belden? Where was the necessity, in the opening of this case, for the learned counsel to assail him, and charge him substantially with knowing of this forgery? If the defence of insanity was honestly entertained, where was the necessity of aiding it, by suggesting that Belden & Harbeck knew that they were lending their money upon forged paper, to help along the defence of insanity? I will not read again the philippic made to you by the counsel in his opening—a philippic bearing on its face the evidence of unusual malignity, because it was delivered from a written paper, which had been before prepared and read to the friends of the accused. I say nothing now about the absurdity that either Belden or Harbeck, or Bishop & Co. (and the remark is applicable to them all), would lend such enormous sums of money to Huntington, a man whom they knew to be without any very considerable means, upon forged paper! If you can believe any such thing as that, believe it. I know you will not. If the case turned upon that, I would be willing to sit down now, and leave you to decide the case upon that point alone; but it does not. I refer to it only for the purpose of showing in what an extraordinary manner this defence has been conducted, and how the persons who have been the victims of the dishonesty or the insanity of Huntington, have been treated, and to characterize generally the course of the defence as stopping at nothing, so that that defence might be successful. I allude to it, moreover, for the purpose of showing that it probably furnishes a clue to the impunity which Huntington has hitherto enjoyed, that his former victims preferred to pocket all their losses in silence, relying upon his retrieving himself, honestly if he could, dishonestly if he might, holding over him the forged paper *in terrorem*, as they did, until some or all of them were paid. And I say, Gentlemen, it is a feature in this case of a most alarming character, in a commercial community like our own, that forgery may be known, to some six or eight people, to exist to a large extent, and yet no suggestion be made that a criminal offense has been committed.

Now, Gentlemen, I shall proceed to a consideration of the offense that is charged—first premising, in reference to the defence made, that there are two very extraordinary theories concerning it presented. You must have observed that the argument of the counsel was various and contradictory. In certain portions of his address he assumed that Huntington was insane, and that that was the defence. Another defence was (and to that he de-

voted, as you will remember, a great deal of indignant eloquence) that, by some arrangement between Harbeck and Belden and Huntington, this was all understood to be a fictitious transaction, one having no semblance of reality about it, except putting money into the hands of Huntington to operate with. I confess I did not very clearly understand what the learned counsel meant by this part of the case; because upon the facts it is entirely clear that, in reference to Huntington, all these firms placed in his possession and under his absolute control, large sums of money. That is not denied. His books, to which I shall advert more particularly by and by, show it from May down to the time of his arrest; but how he was to operate for them with money has not been disclosed, unless the view which we present is the true one, that they let him have this money for the purpose of purchasing the identical notes which he forged, and which they supposed to be real commercial paper. There is no pretense that he was to operate with this money in any thing else,—no pretense at all. Halsey and Stoughtenberg and Bishop, all dealt with him upon the supposition that he was giving them good commercial paper, which he would dispose of and then redeem the loans; and incredible sums of money went into his possession, and were placed under his absolute control, under such an arrangement. Where then is the pretense for saying that this was an arrangement between Harbeck & Belden, and Bishop & Co., in their several transactions, by which they were to receive fictitious paper? Where is the reason for supposing it? Will anybody believe that a reasonable man (and Belden & Harbeck and Bishop & Co. are not supposed to be insane, although they would be, within my friend's rule, if they did so) would loan money knowing that the paper he held was fictitious, much less if he knew it was forged? This theory of the case presented by the counsel is entirely at variance with the other theory, that Huntington was insane. Just see how my learned friend presents the case to you: Huntington was sane—his victims were sane also; and yet they went into this arrangement, by which they put these incredible sums of money into his hands, upon forged or fictitious paper, knowing that it was forged or fictitious! Why, Gentlemen, the defence has consistency and coherence when it is placed upon the ground that this man Huntington, the insane, was cunning and shrewd, and was able to deceive and dupe these gentlemen; but it has no consistency—it has scarcely an element of truth about it, when it is maintained by the same counsel and in the same breath, that these men knew this paper was fictitious or forged. It is making a draft upon your credulity to present the case in this double aspect and on contrary theories, which with a sensible jury will never answer. Now, I shall examine the case in both aspects, not dividing them, because that would lead to prolixity; but beginning with the career of Huntington, so far as we know any thing about it, and considering the question whether he was

a man accountable for his conduct. I shall examine his life in two aspects,—the actual life which he led from his childhood, and the results of that life, which may be called his moral life, to show what sort of a person he was actually and morally, and with a view to his responsibility for crime, when the transaction took place on the 6th of September; and I shall examine it in view of the precepts which we all acknowledge—Hebrew and Gentile and Christian—the precepts contained in that blessed of all laws, the law of the Ten Tables, given by God from Mount Sinai. I shall examine it with reference to two of those imperishable statutes: "Thou shalt not covet," and "Thou shalt not steal." This man was taught in his childhood those commandments. His father, excellent man as he seems to be, says (and there is no reason in the world to disbelieve him), that he endeavored to discharge his duty towards him, as a father, faithfully; and we have the satisfaction of knowing, Gentlemen, and you have the satisfaction of reflecting after you have given your verdict, that his biographer up to the age of maturity was his own father, and that it is sustained by his schoolmate, and by the physician who lived in the neighborhood when he had nearly attained that maturity. I shall examine this biography, commencing with his father's account, with a view to the question whether his life was one, the results of which were all the effects of insanity—of a diseased mind; or whether they were the results of recklessness and disregard of this statute to which I have referred—this moral law of God, and of a depraved mind, reckless of consequences whenever those laws intervened between him and the gratification of his passions or desires. Now, Gentlemen, the theory set up is that this man has been insane from his youth; and all his conduct that is reprehensible is referred by my learned friend to insanity—to a disordered mind. It is important for you, therefore, to trace him step by step, to see whether the man who has led such a life as he has led, has not done so because he was wicked,—has not done so because he indulged in sin; or whether it has been the result of a disordered and diseased, insane mind. Does it disclose the history of a criminal, or the history of an unfortunate? That is the question. Now, what does his father say? He was sickly somewhat in his boyhood—scrofulous; a disease which we all know is eradicated frequently in childhood, and never afterwards appears. He says that he was wayward from his cradle, that he endeavored to restrain him, and found it impossible, that he endeavored to teach him moral precepts, but he would not obey them; that he had some destructive propensities, which my learned friend agrees amount to nothing, such as driving nails, &c. The elaborate account given by the Junior Counsel is not proved, that he cut a hole in a piano. All that his father could specify (honest old man, testifying upon the obligations of his conscience, himself almost upon the verge of the grave)—all he

could specify is that he drove nails, which is a common thing among boys. I asked him, upon cross-examination, to specify, and he admitted that his son was a *thief* in his youth, although he did not know of an overt act; that he was an habitual *liar* in his youth; and, further, that he commenced, while under the domestic roof, that which shows an aptness for forgery. Now, are all these three things evidence of insanity, or evidence of wickedness? Let us see. Were they without motive, for there is never an adequate motive for crime. If a man is to be freed from the consequences of crime because he does it without an adequate motive, no criminal would be punished. He stole to gratify his desires, of some sort selfish, disregarding the law which his father taught him. He was a liar because he thought it for his interest or convenience to lie. Is that insanity, or is it wickedness? He forged in that most sacred of all books, the most important of all testimony in certain cases, the family record,—making a forgery in the Bible. Although I do not know that that of itself displays any great amount of wickedness, because a boy might do that and become a very worthy man, yet it shows a disregard of his father's wishes, and a disregard for truth; but, I ask you, was that the result of insanity, or was it the result of wickedness? You can answer this question better than I, and it gives me pain to ask this question about any one. If my own private feelings were consulted, I would not be here to discuss this matter. Well, what more does this father say? He resided two years himself at Albany, and while there his son conducted his business of cabinet-making, and he had no intercourse with him, except by correspondence, to direct him in his business, and his father does not say there was any fault in the manner in which he conducted the business. An untrustworthy and untruthful boy was charged with the care of his father's business. Was he insane when his father committed those interests to him? Did he believe that his mind was disordered? Or did he not do precisely what every father does,—place him in a responsible situation, arouse his pride, make him feel that he had given him an opportunity of being a man and redeeming the follies and vices of his youth? And I should never be disposed to judge harshly of the vices of a young man, if he redeemed himself after he came to years. That, this kind and loving father did. What more? He designed him originally for the honorable profession to which my learned friend and myself belong—a profession which, if he had applied himself, he might have adorned; but he chose to pursue the path of vice, in which he early embarked, and he has never departed from it. Why were the wishes of his father frustrated? Why was he taken from the academy where his father placed him? Why was he kept to an inferior calling? but because his father found himself disappointed in his moral conduct,—in that obedience which he had a right to expect from him. He left the family

roof at twenty-one, and, so far as we know, has scarcely ever returned to it; and his own father told you, in answer to my question, that from that time forth he has never known any thing, except by tradition, of his course of conduct.

Now, I ask you if it be possible, that you can believe this young man's course of life, while he lived at home, was one of unbroken insanity; or whether it was one of almost unbroken wickedness.

Let us see what we have from his schoolfellow, in corroboration of his father. Mr. Day says he was a boy, in school, upon whose word no reliance could be placed; agreeing with the father that he forged an excuse for being absent from school. In this he had a motive, to escape punishment or censure. That he was put to writing a composition, no doubt one of the ordinary exercises of the school, as we all know, and he copied one out of a very common book, the English Reader; that when charged with it, he denied he knew it was there, and told a falsehood about it. Such was his general course. That he borrowed money and paid back more than one would expect. The evidence that you have from this schoolfellow is that he was a wicked, reckless, untruthful boy. Some called him shallow, because they would impute shallowness to him, who was so frequently guilty of offenses. And it was indeed shallow, as all crimes, great and small, are; because it is better not to commit them. But beyond all possible question, he was according to this testimony of his schoolfellow, a bad boy, wicked, untruthful and disobedient. *Where was the suggestion among his fellows, that he was insane?* Why was he sent to school if he was insane?

He could get his lessons well if he chose, and he would not get them unless he chose. In other words, if he applied himself, he made as much progress as other boys; if he did not, he had some sort of excuse and would not. Substantially this man's testimony corroborates that of the father—not that he was insane, not that his mind was diseased; but that his heart was diseased; that he was wicked and would not do better though he could.

Take the testimony of Dr. Simmons. It is said that he committed offenses without any particular motive. I have examined all those juvenile offenses; and I have shown that he had a motive personal to himself,—not indeed, as I have stated, an *adequate motive*, but still a motive to induce him to commit them. What have we from Dr. Simmons upon the same subject? In addition to writing the names of the residents of the village when he came to the depot, where Dr. Simmons was, we have the actual forgery of an order for a magnet. My learned friend says that there was no motive of any sort of moment. I beg leave to differ with him upon that subject. A magnet is a curious article of interest to a boy. We all remember how in childhood we were attracted by the curiosity with which we looked upon its

extraordinary power. He knew that Dr. Simmons had a magnet of a very powerful character; and he forged an order in the name of one of the most respectable citizens for that magnet; and, upon the Doctor doubting it, he said it was all a joke, took it back, and as the Doctor says, ran along the railroad, kicking up his heels. Now, what did he desire to do by that? To get that magnet into his possession, either for a permanent or temporary purpose, and to do that became, undoubtedly, the motive of forging that order.

He had forged in school the names of the boys to a debating society; an act perhaps trifling in itself, but showing much skill. He was about seventeen or eighteen years of age when he forged this order to get the magnet into his possession; and would have had it, but for the care and the suspicions of Dr. Simmons. The Doctor says he was considered rather an extraordinary boy; and no wonder. Does the Doctor, do his schoolfellows, or does his father, say that he was considered deranged, and therefore, an extraordinary boy? Not a word of it. My learned friend upon the other side did not dare to ask the question from those witnesses upon that subject. And I may remark here, that down to the time when this defence was invented by Huntington, or those in his interest, nobody ever heard of insanity as the excuse for his conduct.

Now, you cannot say that this early history of him, coming down to his maturity is unimportant. "The boy's the father of the man," the world over; and, unless some extraordinary change occurs, after one has arrived at the age of twenty-one, when his career hitherto has been one of vice, he will continue in it until he destroys not only his temporal but his eternal interests.

What was the result then of this course of conduct and this kind of education which he gave himself, in opposition to the education attempted to be given him by his father? That he did not know the value of truth, that he did not feel any of its salutary restraints; that he did not give play to the action of his conscience, if he had one; but that he was reckless, skillful, and possessed of one power above all others which a man could exercise with the most unfortunate effect in a commercial community—the power to imitate handwriting with great success.

Now let us see whether there was any thing prior to that time which indicated any tendency to insanity of any sort? I have said there was no evidence, no pretense that his father or friends considered him insane. Was there any tendency to those branches of insanity which are recorded in the legal and medical books? Was he a monomaniac upon any one subject? He was untruthful. That is a *pseudo-mania*, a tendency to lie. He was guilty of theft. That is I believe *klepto-mania*. He was guilty of forgery over and over again in small matters; and we are unable to give any name to that; my learned friend has attempted, with what success will be seen by and by. None of these, however, are im-

puted to insanity. They were all distinct acts of wickedness, involving a violation of his moral duties, showing the absence of that well-regulated and honest conscience, without which no man can go on successfully in the community. In this situation, then, educating himself in this way, utterly regardless of the rights of others, where they came in conflict with his own wishes or passions, or the gratification of his desires, he comes to New York, and he finds himself, according to the opening of the learned counsel, in this city; and I shall read to you his description of the situation of things which he found here, when he came. Counsel says,

> In the year 1843, and at the age of twenty-one years, he left his native place, and came to this great city; where, as you all know too well, crime and error and mischief of all kinds, not only lurk in byways and in dark and mysterious hiding-places, but stalk in broad day, in the open streets, and inhabit and grow and thrive in public places.

He finds himself, then, with such preparation as he had made, in such a city as this is described to be. And now it becomes your duty to contemplate him in this new theater; to see whether he avoided the crime and error and mischief which are there spoken of; whether he reformed from his former life, or engaged in it with renewed earnestness, in proportion to the opportunities which such a city afforded, and whether he acted his part and endeavored to make himself equal with those who give this city the character described by the counsel. That he might have avoided all the crime and error of the city, no one can doubt. If he were an insane man, would his friends, his father, his sisters, his brother-in-law, have permitted him to come to this scene of crime and sin? Would they not have exercised some care over him, and restrained him? At all events, would they not have given notice to those among whom he moved here, that he was not to be trusted, because of his unfortunate diseased organization? Nothing of that sort was done. He is permitted to remain here, goes into business with Mr. Linsey, and continues in business two or three years, with unfortunate results. He fails, his estate paying only about ten per cent. We have not the history of his life during that period, but we have reason to believe that it was no better than his life before. His business, if honestly conducted might have resulted well; and that it terminated so disastrously is inferential evidence, that it was not conducted upon proper principles; or that his private habits, his course of life concealed from the public, was one of dissoluteness or crime. All we know about that comes from Mr. Randel, and he is no very favorable specimen of a man I can assure you. But we do not find (and that is the most important question in the case), we do not find any reformation in principle or in conduct. If he was, during this time, a quiet, peaceable, and honest citizen, or if he was disordered in his intellect, why is not Mr. Linsey called? Why do we have no account of him during this time, from his friends who knew

all about him? There is but one reason: nobody could speak of any change in his actual or moral life during that period. Nobody is called upon that subject but the confederate in his subsequent offenses,—Randel, a man of whom I am not going to speak at large. It is enough for me to call him before you as he stood upon the witness-stand, and ask you to recollect his evidence, and how he showed that, without compunction, he engaged in very questionable practices, to see that you cannot place much reilance upon his evidence. I shall not speak harshly of him, beyond what I have already said; it is no pleasure to me to speak of him at all. But this confederate in some of his crimes, Randel, is called as a witness to prove actions as evidence of insanity. What account does Randel give of him? Let us examine it in the same aspect. What would be the effect, upon a man of his moral tendencies by the actual course of life which he led afterwards, and how far would it tend, in reference to his moral life, to show that he was utterly reckless, and cared not what offenses he committed? Examine them with reference to the question whether they show crime or insanity. I shall do so as briefly as I am able; and I beg you will follow me attentively while I examine the events to which Randel testifies. And here I must remark that you have no adverse biographer. He is not a witness called by the prosecution. The defence have chosen the most favorable witness for themselves. Randel and his account have not been exaggerated against but rather in favor of Huntington; and I think, when you come to consider the details of that biography, you will find that it is precisely such a character as was formed in youth, springing into manhood, going on from crime to crime, emboldened by impunity and finally ending; just as this man's life at this period has ended—in prison.

His fortunes, according to Randel, were desperate; and, like a great many other desperate men, he goes into Wall street, a place where a man may be honest if he choose, and desperate if he will. No doubt, in business there, there are more temptations than in some other places; but nothing is required beyond proper principles and firmness, to resist them. You have seen that he had neither. You will see how he went on, falling in with the dishonest practices which prevailed there. You will see that he acted like a man utterly reckless of every thing but the advancement of his own interests, and the gratification of his desire to make money; and, Gentlemen, to make money how?—and that is the secret of almost all crime—*to make it without honest labor*, —without making one spear of grass grow where it never grew before, without adding any thing to the essential wealth of the community, to get rich or have control of means without work! He has been actuated entirely by that principle, from the time when he went into Wall street; and he has pursued it successfully —as successfully as any criminal can—until an accidental event exploded all the visions which he had entertained.

Now, Gentlemen, let us see whether he chooses good associations in Wall street? Did he choose originally the society of honest men, who do business on legitimate principles? Did he avoid the bad and associate with the good? We have no evidence of it. We find him with Randel and with men of easy virtue, who would lend their names to bogus banks,—with a set of men of pliant principles around him; and we find him making use of them, and them making use of him. An insane man is as likely to consort with the good as with the bad, but a bad man is not; and the associations of this man are with such as his youth and manhood indicated—the bad and the vile. If he was not familiar with it, why do we find him choosing a dishonest course of life? That is the key of character: the first year or two of a man's existence in the city of New York is the trial of his faith and fortitude; I know it from experience; and if he can successfully resist the temptations thrown round him during two or three perilous years, he is generally safe. If he comes here with loose principles, he may not resist the influence of them—he may give way to temptation; but, Gentlemen, it is in his power—it was in the power of this man—to choose honest associates; and he would not have chosen such associates as he did, if he had not desired to use them for his dishonest purposes. I speak this in all soberness. It is the turning point of a man's destiny; and it was the turning point in the destiny of this man, after he had failed in business. He went into Wall street as a speculator and sharper; and, without means, associated with those who, like himself, wished to make money without labor. His actual life then became dishonest, or rather continued dishonest from that period. Of course his moral life was influenced by his conduct; and he went on from one degree to another, until he ended in larger and thus far more successful operations,—successful for a time, as guilt is very apt to be,—but unfortunate, as guilt generally is, at their close.

Now, let us look for a moment at the details: my learned friend characterized the transactions testified to by Randel as "ruinous speculations," a sort of innocent designation of them. They were indeed ruinous, but they were something more than speculations. They were cheats, most of them—downright flagrant cheats; and the question for you to determine in examining each of them is, whether they were the cheats of an insane man, or whether they were the contrivances of a dishonest one, to get money out of a credulous and confiding community.

This was a period when rural cemeteries had become very much the subjects of interest. Statutes were passed authorizing their incorporation; and, with an ingenuity no insane man would ever exercise, we find the prisoner engaging in three and seeking to engage in a fourth. Let us see what were the principles upon which he sought to operate, to make money out of burial cemet-

eries. Feelings the holiest and purest (we know the anxious desire every man feels to have a resting-place for his dead) were here engaged; and he knew that men under such circumstances would give sums of money for a plot of ground, or for stock to secure a lot for burial, which they would not give for a lot under any other circumstances. A skillful and heartless man, he took advantage of that pure feeling. He attempted to get one up at Baltimore. He actually assisted, although secretly and unknown to his brother-in-law, Mr. Clarke, in getting up a successful one in Buffalo. He attempted to become interested in the New York Bay Cemetery. He had a handsome scrip or evidence of stock, with a president and secretary, having these associations in some instances incorporated, doing every thing that an ingenious man of sound mind would do to carry into effect those schemes; and actually obtained an interest in the Buffalo cemetery, and received from Randel $3,500 for the sale of it. Randel, indeed, says that he bought him out, in order that he might not be connected with the affair. You may give as much weight to that statement as you please. It was only an effort of Randel to show that in that respect he was not successful; but in that attempt he entirely failed, inasmuch as Clarke says it was a successful speculation, and it is so now.

Where is the evidence of insanity in all this? The utmost skill in the designs, successfully carried out, and only failing, so far as the Baltimore scheme was concerned, because there was some difficulty about the title to the property! No suggestion by anybody that he was deemed a man who was insane at the time these projects were on foot! Not even a failure can suggest any such idea; for he made some money in these operations. He made in the course of a year or two, I suppose, several thousands besides those which Randel paid him. Well, what does he next do? He engages in the Panama Steam Laundry Company, a project by no means evidence of insanity. If you think so, give him credit for it. What was his theory? It was this. A person from Panama suggested that, as a steamer arrived there very frequently after a voyage of 15, 20 or 25 days, a washing-apparatus, which could be worked rapidly, must be very successful; and the enterprising mind of Huntington seized upon the suggestion, and he made arrangements for carrying it out. You will perceive it was by no means a mere visionary matter; because in two or three hours from the arrival of the steamer at Panama, and while the passengers were getting ready to set out on their transit across the isthmus, all the linen of the ship and clothes of the passengers could be washed and ready to give to those who were continuing their journey. Is it proved, on the part of Randel, that it was a failure, because there was not enough to do? No, but because of the impossibility of keeping men there in health to manage the concern; and it was abandoned for that

reason. He says, to show how it failed, that he would go to town in the morning (about two miles), leaving the men engaged at work, and when he came back, after an absence of two hours, he would find them (to use his own expression) "all on their backs from fever," and therefore the project was abandoned. I examined him for the purpose of showing the skill and ingenuity of the enterprise; and there is not the slightest evidence of its being the act of an insane man. It was one of the instances in which he attempted to make some money by little labor; and it is alleged he put $35,000 into it, by Randel. Where he got that money we shall see presently. But in all these schemes his motive was pecuniary, just as it is the project of every man who commits offenses of the character of his; and the object of the law in punishing crime, so far as the property is concerned, is to protect one man's property against the depredations of another. He sought to get property into his possession for his own uses by those legitimate means, and now we shall see him abandon these and go into others which are illegitimate.

These four are no evidence of his insanity, but of his skill, rather. The one to which I have just directed your attention, was an evidence of his skill; but there was about his operations the want of a well-ordered and well-regulated conscience. The next thing he attempts is, to get up a fraudulent bank at Georgetown, and all that he does to that is to nominally appoint a redeeming agent at Washington, or in its neighborhood, to get bills struck off, and to employ two persons to act as president and secretary. Here then, is an insane man attempting to turn banker; getting up a spurious bank; and all he cared about, you perceive, was the circulation. Let us see, then, what evidences of skill are exhibited by this. If he had a mere mania for forgery, why, he would content himself with issuing the bills, and getting as much or as little money upon them as he could. But he does no such thing as that. He goes there with the regular process of appearing to have a bank; a redeeming agent at Washington, who was deceived; one in New York, who continued for a little time, and then he attempted to bribe the Bank Note List, giving its editor some $200 in this spurious money, and $50 in good, to quote it, so as to deceive the community, that he might get some of it off and put the proceeds in his own pocket. You see he is going on by progressive steps in crime, growing bolder and bolder. The burial companies were intended to be real; the Panama Steam Laundry Co. was intended to be real. Now he has advanced so far, he does not think it necessary to have even an actual corporation; a fictitious one is enough for him. He had not yet ventured upon forgery out and out; I mean after he came back to New York, so far as we know. He was prepared for it by his early education and practices, undoubtedly. Now, what does he do? He gets a power of attorney from Freeman and the other

man, as president and cashier of this spurious bank, to sign their names to the bills; but he does not forge their names. Is this the conduct of an insane man, one who has a mania for writing other people's names, getting from the president and cashier of his spurious bank, so as to make the transaction a colorable one, a power of attorney to sign their names, and then signing them? Now, what does this show? that he knew it was *necessary to observe forms, so that, when he was arrested, he could not, in addition to the crime of circulating spurious bank notes, have imputed to him the crime of forgery.* No, Gentlemen, he had not been so successful in his practices of forgery at that time, that he thought he could dispense with precautions to protect himself; and undoubtedly he thought that, if he should be arrested about those spurious notes, and charged with their being forged, he could produce this power of attorney, to show that the notes were not forged. This concern lasted, as of course such a concern could only last, but a little while: the character of the notes became known; they were thrown out of Wall street, and the thing exploded; but a large number of these notes remain unredeemed until this day. He passed them off to Thwing, and to various other persons; and the money which was procured for these notes went into Huntington's pocket. Now, is this evidence of insanity,—all this elaboration of care in getting up this spurious bank, protecting himself by a power of attorney? or is it the regular work of a sharper, to get money for that which has no value, to the prejudice of honest people? Why, it seems to me, you can give but one answer to this. His friends at Buffalo, this respectable gentleman, Mr. Clarke, his sisters, all knew this, because it was proclaimed in the newspapers, and he was indicted; and yet the suggestion was never heard from their lips, nor from the lips of any mortal, that this was the work of insanity. If it had been, he would have been committed to a lunatic asylum long before this. It was put down to what it really was; the work of a dishonest, reckless man, pursuing vicious courses in Wall street.

He went from this immediately to another. He was as fertile in resources as crime always is, when it refuses to be checked by discovery. He then started the Citizens Bank, another fictitious affair, without any capital—a bolder scheme than the last, a bank without any redeeming agency here or elsewhere—a bank without any officers, and, according to the testimony of Mr. Barry, with the names of his two brothers-in-law forged to the notes which he put afloat upon the community. There was the same attempt as before to put those notes in circulation,—the same ill success followed; but no indictment, I believe, grew out of it. The persons who had been cheated, pocketed their losses, emboldening him thereby, and giving him greater impunity and license: yet none of his friends interfered to restrain him in this second act of

fraud and dishonesty: nobody suggested insanity; and when that bubble had burst, his fruitful mind immediately inflates another. He attempts to get up a manufacturing corporation in Maine, under color of which, by a fraud upon the legislature, and by a clause in the charter, which he himself drew and which was ingeniously framed, he obtained authority to issue bank notes. In that affair Randel was part and parcel. He says he took it up after Huntington abandoned it; and he admitted with shamelessness that he engaged in it knowing it to be a fraud—that it was not intended to be a bank or any thing of that sort, but that, under the disguise of a manufacturing corporation, they intended to flood the country, so far as they could, with spurious bank notes. Is this, Gentlemen, the career of an insane man, or the career of a rogue? Answer the question to yourselves.

Let us look a little more nicely into this Androscoggin affair. He went up to buy a little piece of land upon the river, ostensibly to establish a manufacturing corporation—one similar to that which had been most successfully established, as well in Maine as in Massachusetts, and in other States. That was to give color to the transaction. He comes to the legislature and prepares a charter. He adopts the usual means to get the charter through (because he said he paid $800 to members of the legislature to get it passed), and it is passed. He knows enough to bribe some members of the legislature. He knows enough to draw a manufacturing corporation charter, and to put in a clause which would give the right to issue bank notes. He possessed the same sort of cunning which was considered characteristic of one of the greatest and yet one of the worst men, that this country has ever known. The Manhattan Company's charter, under which they now bank, was obtained under color of a charter for supplying the city with water; and the clause which gave the power to bank was put in by that bad man of whom I have spoken, Aaron Burr; and it was amongst the first of the banks ever chartered directly or indirectly in this State, and it was considered the highest evidence of his skill.

Huntington followed the example of that bad man, and very likely he had read his life and knew how he managed that bank charter. He seems, according to the statement of his counsel, to have been ambitious of imitating bad men. The fact is not proved, and I do not know whether it be true or not; but the counsel who opened the defence in this case told you that Huntington's forgeries have been committed in the very chair which Robert Schuyler, the great forger, occupied.

Why, Gentlemen, when the actions of bad men are imitated in this way,—when the seats of bad men are so occupied,—the man who imitates those acts and sits in those seats, shows that he is capable of anything in the way of other imitations. We find him doing that which is evidence of the highest skill in one of our most talented men; ambitious to sit in the seat of another who

was a great man in intellect, but a bad man in heart, and a worse man in conduct; and we find him in that seat, following that bad example, and committing forgeries nearly as great as those committed by Schuyler, and for which he fled his country and died in distress and disgrace.

Why, Gentlemen, is it possible now that you can review the biography of this man, as given by his personal friend, Randel, and impute all these things to a career of insanity? Are they not rather fairly imputable to a career of dishonesty and knavery? To that sort of life he commenced in the beautiful and pleasant village of Geneva, where healthful influences were thrown round him, which influences he disregarded, and which he has continued to disregard to the time of his arrest? Is it possible that that which if taken by itself makes a single crime, when connected with others, so as to make a series of crimes, is to be taken as the highest proof of his innocence or want of capacity to appreciate the character of his conduct. Why, no one will doubt that for one of those actions, by itself, he ought to be justly punished; yet we are told, if he succeeds in committing four or five before he is arrested for one, the mere fact that he has committed them all is to be the best proof of his innocence!—the accumulation of guilt to be the proof of innocence of crime! Well, Gentlemen, aside from these transactions, there was nothing in his contemporaneous course of life whatever, at war with the conviction I trust you must feel, that this was a career of crime, and not a career of misfortune.

This contemporaneous life consisted of a series of forgeries while he was with those bad men; Randel being probably chief among them in Wall street, and using them for his own purposes. He occupied a front office, I think, in connection with Mr. Thwing, a respectable broker; and while there he was engaged in a series of bold forgeries. Randel states them to the amount of $2,000. Various witnesses have been called,—Mr. Griffin, Messrs. Foster and Van Ostrand, and others, all whose names were forged, some to notes, some to checks; and one of these checks, a forgery of Mr. Griffin's name, was presented to the Butchers & Drovers' Bank; and Griffin said, on seeing it, it was not his. He was careful not to tell the cashier of the bank whom he suspected of the forgery; and Huntington, by his address and easy manners, was enabled to arrest the knowledge of these forgeries and keep them quiet. No one pretended upon his behalf, or suspected, that he was insane. He did not get impunity on that account; impunity was given because he wished them not to prosecute. He professed penitence, promised restitution; and, most mistakenly, these misguided men did not make a complaint against him. If they are conscious now how much they have to answer for his subsequent career, they must regret their leniency. Had they made complaint, none of these frightful results would have taken

place. You probably would never have been empaneled to try this indictment, had it not been for their mistaken conduct.

The history of his life during all this period shows him to have been concerned in crimes,—crimes to obtain money without labor,—crimes to defraud his neighbor, and take that which did not belong to him,—crimes originating in the violation of the same rules which he had violated in his youth, not to "covet" and not to "steal."

Now, let us see what account is given by the counsel himself of this matter in his opening. How far Huntington is responsible for this statement I am unable to say,—but it is the statement of his counsel:

But he did resume, and went on again, feeling, in the simplicity of his own heart, and amid the confusion of his own deluded mind, that he had done nothing wrong. For your better enlightenment, I now present you with one of the bills of this famous institution. You will perceive that the filling up and names are all in one handwriting. Next he went to the State of Maine, to get a charter of a bank from the legislature, then in session. He had a vague impression that his late financial undertaking was not precisely regular; and now he purposed to legalize a bank which should possess the same easy virtue which characterized the other. He found the assembled wisdom there opposed to granting bank charters, but were very lavish of favors in the way of granting manufacturing charters. It then occurred to him that he might get a bill passed ostensibly for such purposes, but with a section engrafted upon it giving him banking privileges. He drew up such a bill himself, and procured it passage (although he was an entire stranger among them), and fixed upon a site for manufacturing operations, under the charter, at Lewiston Falls, upon the Little Androscoggin River, which euphonious title was given to the act of incorporation. He brought an authenticated copy of this remarkable charter back with him to Wall street; friends were enlisted, and advanced their means readily for the purpose of putting the Little Androscoggin Company on a firm footing. It created a sensation, and was coveted by many who knew it. Bank bills were engraved, certificates of stock were prepared, and ready to be issued; but, alas! his sublunary hopes were doomed. The Boston banks associated together, declared it to be the scheme of a madman, and went to the legislature and had it repealed.

I stop here to mention the levity with which all this is stated, and the contrast which it furnishes to the account given by Randel, who shows that it was a scheme of fraud; and then I quote the rest of this statement to show the life of this man in connection with his forgeries:

With the expiration of the Androscoggin, Huntington went down, and he was literally an object of charity among his friends. The very persons who had suffered by him were moved to pity, and he was assisted with small sums of money, from time to time; and in November, 1853, he was aided with sufficient to take him to California, and there he went; and, after remaining there until the spring of 1856, with but little success, he returned and found that his liabilities on account of his former Wall street operations, amounted to the handsome sum of about $140,000. It becomes my duty, Gentlemen, to inform you in this connection, that the bulk of this large indebtedness grew out of a great variety of forgeries which he had committed on different occasions, under very similar circumstances to those under which he committed the series of forgeries for which he now stands charged upon the twenty-seven indictments, on one of which he is now undergoing a trial, where not only his liberty is involved, but his life; for the punishment imposed by the statute under convictions on this number of charges would consign him to an imprisonment

exceeding an ordinary life of three score and ten years, and an imprisonment which his delicate constitution, and highly nervous and sensitive temperament, could not withstand for a single year. In order to illustrate the theory of this defence, and to give you a clearer idea of the impulses which actuated and governed him in the commission of the forgeries with which he now stands charged, it becomes necessary that we should make known to you some of the leading features which characterized his previous acts of a similar nature.

So that we have here, Gentlemen, a confession authoritatively made on behalf of the prisoner, that he committed forgery before he went to California to the amount of $140,000. That of course includes those mentioned by Randel; and yet the learned counsel says, in the same speech, that he was not a mercenary forger! I have shown you he was mercenary in getting up the Banks. They had no other object; he was indebted for forgeries $140,000, not merely because he had made forged paper, but because he had secured money on property to the value of $140,000 upon this forged paper. Was it not therefore mercenary forgery? Was it not done to get money, to gratify his desires, no matter what these desires were? And, Gentlemen, what became of that money? He engaged in nothing, so far as we know, which cost him an expenditure of money, except the $35,000 at Panama, the $800 on the Manufacturing Charter in Maine, and some $2000 or $3000 in getting up those spurious banks; and yet during that time he received the enormous sum of $140,000, the results of his forgeries. Was it spent on his vices? Was it spent in the gratification of his licentious desires? Was it spent at the gaming table? We have no account of it. He is not constrained to tell us. But *he had the money*, and if he has not expended it in the courses to which I have alluded, he has it still, or somebody has it for him. And is it to be said that this man had a monomania upon the subject of forgery, to get money without any particular motive, and to spend it in extravagance and glittering show? Why, let us mark the contrasts at various parts of his career. Before he went to California, having received $140,000, the proceeds of his forgeries, he was professedly poor, living, according to the statement of witnesses and counsel, in rather obscure lodgings, depending upon the assistance of his father-in-law and friends. He was engaged in no course in life, so far as we know, in which he could dispose of any considerable part of this money, in extravagance in show, in waste, or any thing of the kind. He got the money, and he either has it now, or he expended it as rogues are apt to spend money dishonestly obtained, in vile courses. It is enough for us to know that his creditors did not receive it; because they were not paid, and they have never been paid, unless they have been paid by the proceeds of the money obtained from his recent victims. And yet the man, having obtained this large sum, having as skillfully adapted his means to an end as any rogue ever did, is to be pronounced by you, during all this period, as

being of unsound mind, as having been so from his youth,—as having been a poor innocent!—a shallow fellow, obtaining money, and caring nothing, after he had obtained it, what 'became of it, but simply doing it for the love—the irresistible love of writing other people's names! Why, a mania for forgery, if it were a mania upon the subject of writing, a *cacoethes scribendi*, would satisfy itself with writing the names; but it was not a love for writing alone, for forgery only, which actuated this man; it was love of the money, forgery being the means employed for the purpose of obtaining the money. It was, therefore, precisely what characterizes every dishonest man—the love of money, and a determination to obtain it, under the law or against the law.

Now let us stop for a moment and review his character. You will see, Gentlemen, that he was utterly without principle, if he was not insane,—a man who disregarded the law and the rights of his neighbor—one who would have money, whether or not. You find, moreover, that he had been emboldened by the impunity which he had previously enjoyed. He had come to consider that no one, if he would make a promise of restitution and amendment, would complain of him for any thing that he did; and, after his return from California, where he did not find an appropriate theater for his operations, he returned to Wall Street, and commenced his operations upon a broader and bolder scale. You will see a regular advancement in his career, from the acknowledged vicious, reckless village boy, to the vicious and reckless operator upon a small scale, upon smaller tradesmen and brokers; and among spurious banks, to an operator among larger men, with larger sums, sums sufficient to astonish those who do not deal in large amounts themselves,—in which you find him an experienced, hardened offender, cunning and skillful, eluding detection in a great many instances, buying it off, or procuring his victims not to expose him, by his insinuating address and his promises, and you find him fitted for a higher and bolder career of crime, in Wall street, so far as the amount is concerned. We do not find that he had changed to any considerable extent his associations. We find him professedly without money. The $140,000 was all gone; or, if not gone, it was put away where no body has been able to know what has become of it, and his appetite for gold was not allayed. All his conduct hitherto, after his failure, tends to but one end; that was to obtain money by dishonest means; and he had succeeded without detection and punishment.

Now, what is the effect of such a course of life as this man has led, upon his character? What was his moral life? What was its result upon his moral innocence up to this period? Why, a reckless disregard of the rights of others. There is not a single one, up to this period, which can be properly imputed to insanity, but every one of his acts is properly imputable to crime, and nothing else.

It has been said by my learned friend that he was morally insane. Well, suppose I grant it, for the purposes of the argument. In what sense was he morally insane? Because he had put his conscience at rest; because he had disregarded the great law of right and wrong; because he had steeled himself in insensibility to crime! It was the voluntary result of his course of life, just as much as drunkenness is the result of a course of intemperance; and if a man commits a crime in consequence of drunkenness, or while in a state of intoxication, his drunkenness is no excuse,—it is rather an aggravation of his crime; because he should not have put himself in a condition of moral insensibility by intemperance. Well, if a man, by a long course of vicious life, by indulgence in the greatest of crimes, produces this moral insensibility, is he to be regarded as morally insane? The law is made precisely for such men. It is made so that they should be cautious of the first step in guilt, or that if they have made one step, they should retrace it; but we know that successive steps in guilt lead to greater and higher ones, and if a man indulges in his passion for money, and in obtaining it by crime, he will continue to do so until he is rebuked and punished; and therefore, instead of its being an excuse and apology that he had made himself morally insensible to the consequences of his guilt, it is an aggravation of the enormity of his conduct. Now, in this condition, with a debt, as my learned friend says, of $140,000 obtained upon forgeries, hanging over him, he continues his new career in Wall street. His offences, by those who knew them, had been kindly overlooked,—a very false kindness—a kindness most destructive to the interests of the honest men of this community. But they had been overlooked, and still there was an opportunity for amendment and a time for repentance; and it is to be regretted that he had not sought it "carefully with tears." But he did no such thing. He continued his bad associations; he attempted to elevate them, only to enlarge the sphere of his victims, and he did not change one iota of his conduct, but continued his career in a more flagrant and outrageous manner, the particulars of which I shall find it necessary to examine. Now Gentlemen, look at the course he pursued. These large debts had to be paid, or the pressure relieved, especially if he had no means remaining of the $140,000; and if he had not, there is another index of his life. That $140,000, or the greater part of it, had been squandered on his vices. It had not gone to his family. He left them frequently in destitution. Why, men pursue a career of crime, especially in a city like this, and spend large sums of money in what nobody knows any thing about, until the explosion comes; and then it is found that the secret life of that man has been one of vice and infamy. I cannot for my life imagine what has become of this $140,000, unless it was spent precisely as rogues and sharpers spend their money. Why it is as old as the proverb, which it would be well for all of us more to

read, that "wealth gotten by deceit is soon wasted," and generally it is wasted upon the vices of him who gets it by deceit; and the very expenditure of that large sum of money, without our knowing in what manner it was spent, shows the immoral influence that was exerted upon this man by his course of life. It never went to any useful purpose; and I have no doubt, if the truth could be disclosed it would give a key, that would unlock some of the mysteries about this case. But whatever had become of the money, professedly he had none; and his debts had to be paid and the creditors appeased. Thwing held his claim *in terrorem* over him; Griffin did the same; and those bank notes and checks, all of them, have never been delivered up to Huntington, until within the last five or six months. He commences with this load of debt, and with the apprehensions which the manner of its contracting would necessarily exercise upon him; and now we will examine, with his immoral constitution, how he carried himself during the remaining two years. He starts business as a note broker in Wall street. You are aware, that that is a very reputable business,—one in which honest men, who transact their business justly, may make very large profits, and may do it without forgery. Immense sums of money pass through their hands every day, and they keep bank accounts altogether beyond the accounts kept by Huntington at the height of his criminal sucsess. He professedly started in Wall street, in a small way, to carry on the business of buying and selling notes.

We know, from the testimony of Mr. Scofield, from the testimony of Harbeck, and from the statements here in regard to Mr. Belden,—although Mr. Belden has not been examined,—how he commenced operations with them. The counsel would have you believe that Belden and Harbeck sought Huntington. Why, Gentlemen, nothing is farther from the truth. Why should they seek an obscure man, without capital, to have any transactions with him? If there was any truth in the statement made in opening by the counsel, that Mr. Belden had done any thing to give this man, Huntington, the unenviable notoriety which he has since achieved, they should have proved it. Mr. Belden was attending here day after day, in obedience to their subpœna, and they did not call him. He has been here; and, for aught I know, is here now, attending to this trial. Their business was, in part, lending money, and buying and selling notes—a business in which Huntington was in some degree engaged; and there was nothing in their relative circumstances to induce them to seek him. They were large capitalists, some of them men of their millions. And upon whom did Huntington, with the education which he had given himself and the practices in which he had indulged, fasten his eyes, elevating them above the common small herd upon whom he had formerly preyed, and looking for a larger and richer field of operations? Why, upon Bishop &

Co., Harbeck & Co., and Belden & Co. He sought to make them his victims. He sought to do it by his insinuating address, by getting their confidence by a series of honest operations, and by stimulating their desire for making money by professedly bringing to them large gains; *and he succeeded.* The boy who had graduated at the village academy, was now fitted to engage in operations in the city of New York. His career here had fitted him for this, and he fastened his eyes upon those who had the means, and upon whom he thought he could practice with the greatest success.

Let me here advert for a moment to the testimony of Randel, to show his power; and some men possess a magnetic power in their intercourse, which obtains confidence in an unusual degree, and, I am sorry to say, frequently when it is most undeserved; for of all things, in my intercourse with my fellow-men, save me from a plausible man! I would rather meet a man of forbidding exterior, with an honest look, than have any thing to do with a smooth-spoken, insinuating person. Randel says he wished Huntington to remain ostensibly in some of their operations, because he was so successful in gaining the confidence of people. He could go into a bank, he said, and, without knowing anybody, get credit before he left it. I shall show you by and by that the same power has been practiced upon some most respectable medical men, until it has led them to the verge of a loss of some professional reputation. This cunning, smooth, artful man, characterized by Randel in this way, had fitted himself by this long career of crime and duplicity for practicing upon those men who were fond of large gains in Wall street; and they became his ready and unconscious victims. Let us see how he began. He began with Harbeck & Co. by coming to borrow small sums upon Lake Shore Railroad stock, which was perfectly good; placing the stock with his own paper for a few days, and redeeming his obligations with very great punctuality. There is no reason to suppose (on the contrary, Harbeck denies, and you must see that denial admits of no doubt) that they knew of his previous career; because if they had they never would have touched his paper, or had any transactions with him. Of all men in the world those situated as they were, are the last to have any thing to do with a man of questionably honest reputation. But he lays his trap for Harbeck & Co. by borrowing on good stock considerable sums of money, and paying up with great punctuality, commencing in the fall of 1855. He had previously had similar transactions with Belden, and Belden & Co. were, in some sense, introductory to the business with Harbeck & Co., because they had seen Huntington in Belden's office having money transactions. He was understood to be a note-broker of good reputation. The evidence in the case leaves no sort of doubt of that. His operations with Belden were of the same gradual character, founded upon per-

fectly honest transactions, so far as we know of, the notes all taken up by him, and the stocks and the loans repaid with great punctuality. To such an extent did this go on, that this man had the entire confidence of both of these houses; and Harbeck & Co. being the largest capitalists, were the men from whom he obtained the greatest sums of money. To show that this admits of no doubt, and that he practiced upon Harbeck & Co. and Belden, precisely the same as he did wherever he wished to fix his fangs, I call your attention to the testimony of Scofield. He borrowed money of Bishop & Co. at seven per cent., in some instances. He loaned to them at seven per cent., in some instances. They occupied an office in the same building, I believe, a room adjoining his; and the transactions of Bishop & Co. are precisely the same as those of the other two firms. Mr. Scofield is a witness for the defence. He gave you an undoubted relation of the facts, as they occurred, and there can be no doubt upon this subject. Let us see what he tells you. He says that the money would be borrowed upon such terms as these: Huntington, after he had established a confidence with all these houses, would say to them, "I can buy such and "such paper of some of the best commercial firms of New York, "at from one to one and a half per cent. per month—(it usually "has three months to run); and I can sell it again at from seven "to nine per cent. per annum. I can make, therefore, a consid-"erable sum, from $200 to $500, upon each transaction, if you "will give me the means to buy." And then they loaned him the money to buy the paper. He leaves the paper itself as a pledge, and when he sells it, he comes and pays them the original loan, takes up the paper as if he had sold it, to deliver it to the purchaser, and gives them what he calls half the profits. Now, this is the transaction with Bishop and Co. There has been no pretense that Bishop and Co. were accomplices; and yet there would be just as much reason to believe that they were, as anybody else. And what is the practical result of Huntington's operations with Bishop and Co.? Why, to get out of them a large sum of money, upon forged paper, the whole transaction being entirely fictitious, and paying them back with their own money, or money obtained from some other source, something which he calls profits. You perceive, as I said in reference to Harbeck, there is no usury about the transactions, and Harbeck said there was none. "My loans were at seven per cent." He was not asked whether there was any division of profits, or any thing of that sort. He was answering in reference to usury, in these transactions, and they were precisely the same as Bishop's —there could be no usury. There could be no usury in buying, or aiding another to buy commercial paper, selling it again, and dividing the profits. That was a perfectly legitimate transaction; and after Huntington acquired the confidence of these people, he led them into these large operations by that course, borrowing

first upon good stocks, or notes which they supposed to be good, in small sums, in some instances upon bank notes, which he pledged, paying them up promptly the interest, and inducing them to believe he was a good customer, which they undoubtedly did, and then getting them into buying commercial paper upon shares. For what purpose? So that he could get a large amount of forged paper into their hands, increasing it from time to time, until his mercenary avarice was intended to be gratified, and then escaping with his spoils. Now, this is the transaction with Bishop and Co. I have preferred to take it, inasmuch as the transactions with Belden and Harbeck were assailed as being dishonest—assailed upon the very extraordinary ground that they must have known that this paper was all fictitious. If they knew it, then Bishop & Co. knew it,—then Scofield knew it. They are as much guilty as Harbeck; and is my learned friend to hold here, that this man is to be acquitted upon the idea that those men who were the victims of this elaborate and cunning fraud, were aiding in that fraud, to their own destruction? If Bishop & Co. did not give away their money knowingly upon forged paper, did Harbeck and Belden do it,—men as sharp-sighted as any in Wall street; men who are represented here as loving money inordinately; that they would for the mere sake of a paltry profit, which profit *was paid out of their own money*, take forged paper as a pledge for vast sums loaned to Huntington, and placed under his entire control? No, Gentlemen; my friend miscalculates upon the common sense of a jury, when standing side by side with the transactions mentioned in this instance are those of Bishop & Co., proved by his own witness to have been of the same description, for which, too, this man Huntington is indicted. Why, Gentlemen, if I were disposed to turn the tables, and deal out charges against persons connected with these various transactions, heedlessly and at random, what could I say with propriety? It is represented here that Huntington went to prison penniless, that he had not money enough to employ counsel; and yet we have counsel of the greatest ability and learning, staying here two weeks, and counsel who, so far as I know, was never suspected of working in cases of this sort gratuitously! He gets to prison penniless, and yet the counsel of Bishop & Co. spend two months to get up this defence, and come here to defend him; and although they have to sustain in civil suits the same transactions which they complain of in respect of Belden, they hurl abuse in all its forms against Belden and Harbeck, who are simply victims of the same description as their own clients, although in larger sums. If I were disposed to make charges in this case without warrant, I might say that Bishop & Co. furnish the means of defending this great criminal. But I do not believe any such thing as that. The evidence, however, is as strong to prove that fact, as it is to prove that Harbeck

and Belden, who had such transactions as Bishop, are dishonest, and that Bishop is honest. Bishop is the friend of Huntington, —his counsel is the counsel of Huntington, and he has been so since the time of his incarceration; and yet I do not believe that Bishop has been any other than the innocent victim of Huntington; and the motive why he aids him now is that he wishes, by his assistance, to secure from the wreck of his property something to pay up the judgment that has been entered; and the strife between Bishop & Co. and Belden and Harbeck is, who shall get the most from this wreck. So far, then, as this matter is concerned, it is the grossest perversion of the case to charge any thing upon Harbeck and Belden which is in the slightest degree censurable. I meet every thing that has been said upon that subject with a stout, and I know an honest denial. If Harbeck and Belden have been dishonest in this matter, it is the most extraordinary case in the world, because they have been dishonest to their own hurt. Belden has lost $110,000. Harbeck & Co. have lost by these forgeries a great deal more than that; so sensitive was Harbeck upon the subject in reference to his commercial standing and skill, that he was unwilling to tell the amount;—and Bishop & Co. have lost between $30,000 and $40,000; and these men now (two of whom in their civil interests I represent), have been held up before you to scorn and contumely,—one of them charged with perjury by the counsel of the man who has defrauded them, speaking of course by his instructions and not from a wish to say any thing in disparagement of respectable gentlemen.

And thus it is ever. Gentlemen, I have a much better opinion of human nature, than my learned friend upon the other side. I believe there is much good and a great deal of charity in the world. I do not believe men like to hear evil of their neighbors, always. I believe there is some love, some good feeling among men. I can refer all the peculiarities which the learned gentleman says distinguish our restive race, to the love of a higher advancement and a better civilization; and I can refer even the cry of "Stop thief!" and the readiness with which it is attended, to a principle of inherent justice, which arises in every man's mind, the moment he learns that one has been wronged. But I will let that pass. It is always the case, however, that a great criminal, who is detected in his crimes, turns upon his victims; and when they seek to subject him to merited punishment, he attempts to escape by the confusion and outcry which he makes in reference to them. So, here, the attempt has been, on the part of both the counsel, to raise a cry of persecution against Huntington, and to raise it against gentlemen of probity and character, who have suffered to an enormous extent by his frauds,—who, in other words, listened to his statements in the course of their ordinary business transactions, which statements were a series of false pretenses from beginning to end, by which large sums of

money were obtained; and all the vituperation and abuse which have been heaped upon these gentlemen, must be applied equally to Bishop & Co., for the transactions are precisely the same; and it involves the proposition that Huntington told them in every instance, the most deliberate falsehoods in relation to the character of the paper which he brought to them, and upon which he obtained credit.

Let us see how he led them along, by the hope of large profits, on buying good commercial paper in the market, and then selling it again, he acting as the broker. And, Gentlemen, there is nothing in respect to which any criminal reflection can be cast upon any of these parties, except the want of more care. It cannot be denied that he had established such an amount of confidence, and had obtained such a hold upon them,—they believed him so entirely honest, that they did not look close and send to the persons whose names appeared to be to the paper, to see that it was really genuine paper. It is said that the paper was not in every instance, an imitation; in some instances not even an attempt at imitation. Many of the notes were, however. Phelps, Dodge & Co.'s were; and a knowledge of the genuine was obtained at the custom-house, by seeing the signature of Mr. Stokes there. All that can be said in reference to the matter is, that they were credulous; that they believed in his integrity, and bought a large amount of paper in connection with him; that they lent him for that purpose, considerable sums; knowing, however, that they were sums for which those houses might well have their paper out. Look at the skill with which it was prepared, with regard to Phelps, Dodge & Co. They were purchasing copper from the Minnesota Mining Co., and the instructions were given, and the notes prepared as properly received from that Company,—apparently real transactions. Huntington induced them to believe that this was genuine paper, and Stoughtenberg, Halsey, Scofield and Harbeck swear to it; and is a rogue who gets money by false pretenses, upon forged paper, to turn round upon his victims, and say, "You did not exercise care, and therefore I am not to be punished?" No, Gentlemen; he shaped his means skillfully to the end he designed to accomplish, of obtaining money from men who had his confidence. He abused that confidence by his words and by his actions; and the false tokens which he held out to them; and it is an addition to his dishonesty, that he instructs his counsel to come here and malign the men whom he has cheated and deceived. Were not these mercenary transactions? Were they without a motive of pecuniary interest? Were they not to obtain, and did they not obtain, money? And did he not obtain it by giving worthless paper, which he knew to be worthless, skillfully contrived for that purpose? All evidence of insanity, according to the counsel upon the other side,—the most insane man whose conduct ever underwent investigation in a court of justice!

Look at the circumstances under which this paper was prepared. It is said that he forged his brother-in-law's name to the Citizens' Bank notes. Perhaps he did; but we find one of his brothers-in-law, taken from a respectable calling, in West street I think, and brought to Wall street in May; all his transactions with the Harbecks, and Bishop & Co., having been honest, so far as we know, to that time; although there is reason to believe many were dishonest and they did not know it. But this young man is brought down there, and an office hired for him. He is professedly a note-broker; and all that he does is to fill up notes for Huntingt; on and we have some five or six little scraps of paper here, instructions to fill up those notes; and we have one book among those taken by officer Bowyer when he was suddenly arrested, showing that he kept an account of those notes—it being in Huntington's own handwriting—and distinguishing some of them as the "Barry" notes. It is a curious record of his transactions, keeping a sort of hurried bill-book of his forgeries, so that he might take them up. If the gentleman had seen that paper before, he would have brought it as proof of insanity; but I answer that by a very plain and familiar case. The last man who was executed for forgery, Fauntleroy, did precisely the same thing. He was discovered before the time was matured for escaping from justice; and he had kept a list of his forgeries by him for four or five years, and had never destroyed it. He kept it as a sort of time-keeper for himself, to prevent detection; and it formed one of the important items of evidence against him. Why, Gentlemen, no forger could carry a number of transactions in his mind; he must keep some memoranda; Huntington did it; Fauntleroy did it; every forger did it; I know that Robert Schuyler did it, for I have seen it in his own handwriting. No man's memory can keep itself charged with a number of falsehoods with accuracy. That is the reason why a man cannot tell an untrue story twice alike. The falsehood does not impress itself upon the memory—it is an invention. Facts do: they are daguerreotyped, if I may so speak, upon the memory; therefore it is necessary for a forger to keep a record of his forgeries, and all great forgers have done it. In some instances, when the explosion took place before they suspected it, the record of their forgeries remained in their own handwriting. It remains here. It remains in Henry H. Barry's fragments. Huntington did not know where they were—he supposed that those little fragments of paper were destroyed.

It is a wonder that Barry kept them. Perhaps he did so for his own protection; he may have suspected something wrong about it. They were put in the desk opposite Huntington's, in the same office; and when this detection and arrest came so suddenly, the effects in the office were seized, and this book, his own record of offenses, and Barry's papers of directions, were found, and are here presented in judgment against him. Why, Gentlemen,

is it proof of his innocence or his insanity, that some of the evidences of his crimes, prepared by himself, have been discovered and produced? No! If it be so; when a burglar leaves his shoe or his hat, or the murderer leaves his bloody knife or pistol, with which he committed the crime, and it is proved to have belonged to him, it is to be a proof of his innocence or his insanity! It is just as reasonable to argue so in one case as in the other. Crime, sooner or later, is always detected. Sooner or later, the criminal himself furnishes the evidence to convict himself.

The moment a man commits an offense against the community, his relations to it are so changed that detection must inevitably follow; and there always will remain some of his footsteps by which he may be detected,—some trail that he has left, by which it may be known that he is a criminal. So it is here. The greater the boldness in crime (according to the argument upon the other side), the more evidences of its commission that are left by the criminal, the less his chance of conviction. He has only to be reckless; he has only to write an account of it; he has only to leave something by which he may be traced, and his acquittal is certain. What, then, becomes of the rule that a man may be convicted of a crime in some instances, even without proof of the *corpus delicti*—proof of the body of the crime—upon his own confession. According to the argument of my friend, it would be proof of his innocence; when, by the settled rule of law, as laid down in all human evidence, confession alone is enough to convict. In this case it is contended to be one of the most important evidences of his innocence! Why, Gentlemen, we have had reversed here many of the rules which prevail in courts of criminal judicature, in reference to the conviction of a defendant; we have had an attempt to reverse, upon medical testimony, the law of the land in regard to crime, and to set that law at defiance. I shall refer to that by and by; I mention it now simply because it is kindred to the subject which I have been considering. So far from this evidence furnishing any demonstration of his innocence or insanity, it furnishes nothing but evidence of his recklessness, of his bold character as a rogue, and his determination to get money, setting the laws entirely at defiance. Let me examine for a single moment this $21,000 transaction, out of which this indictment for forgery has originated. You remember that Harbeck told you that, on the 6th of September, Huntington applied to him for a loan of $21,000; and he did not, as my learned friend suggested, ask it upon Hoffman and Leonard's check. He brought that as collateral. That was forged. He gave his own check, payable upon the 9th, which has been produced, and he produced as collaterals four forged notes (one the note of Phelps, Dodge & Co.) and one draft accepted by Graydon, Swanwick & Co. Is there any doubt about that transaction? It is sworn to by Harbeck. It is sworn to by Halsey and Stoughtenberg, Harbeck & Co. advanced $21,000 upon those four notes, one draft and one check,

payable upon the 9th of Sept., Huntington saying, as he had said in his other transactions, that he could sell the paper and would bring them their share of the profits. Here is his cash-book,* and on that very day, the 6th of September, the first sum he receives is $21,000, from "H." That book was kept by the honest boy Tracy, under Huntington's direction. I wish you to look at the manner in which he kept that book, for the purpose of seeing whether he was engaged in an honest or dishonest business. You can tell who "H." and "B. & Co." are in every instance.

I shall have some very curious things to say, by and by, in reference to that cash-book. It is an account opened with "52 Wall Street." There is not a name in it, but initials are given to show that he deposited the checks which he received; and the sums that he received and deposited in checks, and the checks that he paid out, are entered in the cash-book by Tracy, under his direction, in initial letters only, of the party signing the checks, and designating to whom they were given; and on that very day is the entry of $21,000 obtained by him from Harbeck. Well, it is said, in connection with this transaction, that there was no intention to defraud. No intention to defraud! What does counsel mean by that? In what sense does he use such language? There was an intention to get money upon forged paper. Is not that an intent to defraud? Did he not get money upon forged paper? That is actual defrauding. Has it ever been repaid? Never. Has not the fraud continued and been consummated? And yet my learned friend, in his zeal and earnestness, says to you, that there was not only no intention to defraud, but there was no actual defrauding! Why, Gentlemen, money was obtained that has never been repaid. It has been squandered upon fast horses, on fast furniture, on fast women, or something of that sort, and never has been repaid to Harbeck & Co. How, then, can it be said that they have not been defrauded by means of this forged paper on which they relied as a security for the loan? All the witnesses agree in telling you that the money never would have been advanced to this man without security, those very notes, this check and this draft, —and yet an honest jury of twelve men, chosen, as the gentleman says, by preference, from the class from which, I think he said, he originated, is called upon to say that there has been no intention to defraud, and no actual fraud perpetrated, in uttering as true, this forged note of Phelps, Dodge & Co.!

Now, Gentlemen, the law upon this subject is, that no fraud need be committed, actually, in order to convict. I will not stop to argue that point. The attempt to gain credit upon forged paper, is an uttering, because it is of dangerous tendency to be allowed to use forged paper at all. The criminal wrong, or bad intention, is precisely the same, whether it succeed or not, and

* See foot-note, *post*, as to this book.

the question whether an actual fraud has been committed, is only to be taken into consideration in inflicting the punishment. The law punishes the design, the evil mind; and that exists whether the party is or is not defrauded of his money. Every thing else is a question which the court takes into consideration in inflicting the punishment which the law demands. That Huntington had that money admits of no doubt, because it was paid to him, and it is entered in his cash-book. It went into his bank; and his check due on the 9th was never presented, because it never was intended to be presented. The arrangement was carefully guarded, so that none of those notes should be presented. Huntington was not to have them paid by the persons who drew them. They were all upon time, having some three, and some nine months to run. It was so with all the transactions, and the arrangement was, that he should come and get them when he had sold them, at an advance above what he gave for them, to other parties, and take them up himself; and thus, as he had done this repeatedly in similar transactions, they were lulled into security, and believed in his honesty. You see, therefore, the cunning which he exercised. He kept an account of these notes in this book. He knew when they became due, and he was careful in every instance to go and take them up, pretending in every instance that he had sold them at a profit, dividing those profits and paying back the original loan; and he was able to do this, and increase his amounts larger and larger, because when he took up the earliest notes he paid them back a portion of their own money. He obtained from them to-day, under pretense of purchasing new notes, loans which enabled him to go and take up the pledges which he had made yesterday or a week ago; and he was carrying on this business all the time, under pretense of buying and selling notes with the money which they furnished. So he was plundering them without their knowledge, professing to divide the profits which he said were real, but which were not, deluding them into the idea that they were making money, yet, all the time paying these innocent victims of his fraud with their own money, and at the same time keeping in his hands large amounts, undoubtedly obtained from them by means of the forgeries.

Now, I ask you, Gentlemen, if there is not skill and cunning of the most adroit character in this? Could not Graydon, Swanwick & Co., with reference to a man in whom they had great confidence, have been defrauded in precisely the same way? Take Robert Schuyler, in the height of his prosperity. Could he not have gone to Graydon, Swanwick & Co., or to Robbins & Co., in precisely the same way, with forged paper, saying, "Here are notes of various people, that I can buy at such and such rates. I can make five hundred dollars upon this transaction, one thousand upon this, or two thousand upon this; and if you lend me money to

buy them with, I will divide the profits with you." And would those firms have thought it essential, as the notes had three, four, or nine months to run, to go and see if they were real transactions? Why, Gentlemen, never. Robert Schuyler did the same thing in reference to fraudulent certificates of stock of the New Haven Railroad Company, to the amount of over two hundred and fifty thousand dollars, with a single individual, who kept that stock in his possession six or eight months, without going to see or even making any inquiry about it. All that person had to do was to go to the office of the New Haven Railroad Company, and see (if Schuyler would have permitted him to examine the books) that there was no such genuine stock.

I mention this for the purpose of showing that when confidence is created in this way by a person who is supposed to have a right to receive the confidence of dealers in large money transactions, it never, never leads to a suspicion; because if a man doubts in regard to such transactions as those I have spoken of, he at once refuses to enter into them, he will not risk his money upon a doubtful transaction. Suppose that among this paper were notes of Boston or Philadelphia firms, known to be perfectly good, would any body who had bought them think of sending to Boston or Philadelphia, to inquire whether the transactions were real or not? Huntington was too shrewd, too skillful a man to expect that; he had acquired so large a confidence that they did not think it necessary, and he knew they would not think it necessary, to set any watch, or to exercise any precautions in reference to the paper which he bought.

Now, after having examined this single transaction of $21,000, and having shown the actual defrauding, by means of the forged paper, let me examine for a little while the extent of the forgeries; because, although that is not essential in reference to the particular crime of forgery laid in this indictment, it is of great importance in relation to the question of his guilt generally, and especially with reference to the defence of insanity. I shall do it chiefly with a view to show whether or not he is a mercenary forger,—whether he forged for the mere love of it, or for the purpose of obtaining money.

I have shown you how skillfully his plans were laid, how he went from one step to another up to May last, and thence commenced his operations on a bolder and higher scale. Now let us show how successful he was from May to 8th of October. It is proved by Mr. Bowyer that there were surrendered at the police-office, $574,000 of forged paper, by three firms: Harbeck & Co. $310,000, Belden $215,000, and Bishop & Co. $49,000. We have added to that two notes of Bishop & Co., one for $20,000, and another for the same sum, upon which he had made loans amounting to $40,000; and although those notes of Bishop & Co. were professedly for their benefit, it is proved by Scofield that

they were not authorized, although they took up the outstanding loan for the purpose of saving whatever they could, as there was a margin between the amount of the loan and the Lake Shore stock of three hundred shares, which was pledged as collateral. Now these are all admitted forgeries, boasted of, in fact, by the counsel in opening and proclaimed as evidence of the insanity of this person! And yet there never was so well directed insanity in the world as that, producing to this man over half a million of dollars! He is not a mercenary forger, exclaims my friend. He does not do it for the love of money! He does it because he has a mania for forgery! And yet he realizes by forged paper, from these three firms, over half a million of dollars!

Now, Gentlemen, what has become of the money? In what period did he obtain it? The transactions in this cash book commence with August 21st, and ended on the 8th or 9th of October; but according to Mr. Halsey's account, the transactions commenced in May; and there are five and a half months to October, the period of his arrest. What has become of all the money he obtained, I ask? That is a very important inquiry here; because if he was an insane man, you would find this money squandered, all of it, if he was as insane in squandering as he was in acquiring. It is said he went to prison penniless. But what has become of the money? This inquiry is as fruitless here as it was in reference to what he did with the one hundred and forty thousand dollars that he got upon his forgeries before he went to California. But he has not expended his last fraudulent acquirements in any thing that we know of. Suppose he owed one hundred and forty thousand dollars when he commenced these operations, two years ago, and suppose he has paid that indebtedness all off, there are over three hundred thousand dollars left, to be accounted for. But he did not pay those debts all off. I gave in evidence this account found among his papers, in reference to items of claims against him, for the purpose of showing his fraud anp deceit. That statement amounts to one hundred and thirty-three thousand dollars, and pretty much all of it is marked in his own handwriting as "*paid.*" If those were the old debts, created by the former forgeries, and they were paid, how has he paid them? Out of the proceeds of his subsequent forgeries; for he got money in no other way, except in small sums, and he has never earned any thing approaching one hundred and forty thousand dollars by legitimate operations. He has earned nothing but infamy by his operations.

But it is not true that he had paid the debts set down in that list. Griffin is put down at $8,000. I asked him if he was paid, and he said, "No;" yet it is marked "paid" by Huntington. So it is with Randel; so it is with Clarke, and I doubt not with reference to other creditors. He has marked them as paid, when he never paid them in full. If he meant by "paid" that he was

"released," the debts may have been discharged; but they were never paid in full. But that statement is as false as his other statements. He has not paid any considerable portion of this half million, obtained upon his forgeries, in discharging his old debts. Besides the money obtained by forgeries, he overdrew his bank account in the Bank of the Republic $9,000; and that has never been paid. Whether he overdrew his other bank accounts I do not know. It is unfortunately the case that when banks make losses in this way, they are so ashamed of being duped that they will not speak of it. That is the reason why other forgeries do not appear here, because men who have been made his victims are ashamed to come forward, when they are to be subject to abuse and vituperation in a court of justice.

He has not paid his debts, then. Has he squandered the money in costly living? Not the whole of it. He goes penniless to prison, and yet he gets up a defence as magnificent in its proportions as his frauds have been large and extravagant. Let us look at the details which have been given in reference to his private household, the equipments and appointments.

His horses could not have cost him over $10,000. The highest price he paid for a span was $2,650, and if he had eight or ten spans by continually exchanging them, the money out of pocket would not have been $10,000. So his experience in horseflesh is not so very remarkable. I know one gentleman who keeps thirteen horses, all valuable; but he is honest and can afford it.

Mr. Brady: He keeps a livery stable, I suppose. (Laughter.)

Mr. Noyes: No; he is a private gentleman, of large fortune, and indulges his taste in horses. Those horses I have spoken of were bought by Huntington; and, with a skill which is remarkable, he reduced his establishment to four horses at the time of his arrest. Well, he paid his coachman only ordinary wages,—$20. When they were going into the country, it is true, he gave him a gratuity of $30. Men can give away money liberally, who get it without any exertion. It is your men who get money in this rapid way, by vile means, who spend it as if it cost them nothing. The man who earns his dollar, keeps it—he knows its value. Huntington has never known the value of money, because he never acquired it by honest means. Well, put it $10,000 for his horses.

He had a house a little over sixteen feet wide. He had two, and an interest in a third, where it is said he kept boarders—lady boarders. (Suppressed laughter). The whole furniture in all his houses, and all the appointments, only cost him from $20,000 to $25,000. Well, add that to his horses, and you have $35,000, taking the highest figure. The purchase of his furniture was judiciously made; he had been brought up to the cabinet business. The purchase of his horses was very judicious, for a pair which he had on hand at the time of his failure, sold for $1,550, I think. They must have been a very remarkable span of horses. He had

another pair which sold for $550. An auction is not the best place to get at the true value of property of this sort; but so far as we know, during the period of his extraordinary career from May to October, he never made injudicious purchases of any thing, from diamonds to horses, or from furniture to hair brushes. Of every thing he got the best article in market, and paid the best price. All that has been shown is that he bought as no man who acquired money honestly would buy things—and that is the history of the career of every man of crime,—from Fauntleroy, who was executed, to Sadlier, who was said to have committed suicide, but is by some supposed to be living somewhere in Australia; and Redpath, the recent forger in England; and Schuyler,—and every man who has got his neighbor's money by fraud. Why, Gentlemen, "Montague Tegg, Esq." (in Dickens' "Martin Chuzzlewit"), who gets up spurious companies and commits all sorts of offenses, is in his character an exact type of all men who get large sums of money by dishonest means. They spend it precisely in this extravagant, improper manner,—in luxurious furniture, magnificent houses, costly adornments, and things of that sort. Extravagance is the necessary result of crime; and it seems to be fated that money obtained by crime, a great portion of it at least, must be expended in just this foolish manner. It is not insanity to do that; it is a moral insensibility that makes a man do it. How much did this man spend in this way? We have $35,000 for horses and furniture. I will put diamonds at $10,000 more, and then we have $45,000. His living during five months could not have cost him more than $5,000; and at the outside only $50,000 of the large sums obtained by his forgeries, amounting in the aggregate, to over half a milllon, is accounted for. He purchased a place in the country, for which he gave 20 bonds of the Troy and Greenfield Railroad Company, which I believe were never worth over 20 cents on the dollar, and which he must have got for a very small sum. Assume that he gave $4,000 for these; and on the most liberal estimates, making allowances enough to startle any one on this subject, there is no more than $55,000 or $60,000 of these large sums obtained upon forgeries accounted for by him. What, then, has become of it? That he obtained it admits of no doubt. We have the entries in his own cash-book of the amounts received from Harbeck & Belden; and the evidence given by the witnesses upon the stand is more than sustained, showing that he received from August to October, enormous sums of money,—above what he paid back,—successfully obtaining them under the pretense that he was selling genuine paper and dividing the profits with them, when he was telling absolute falsehoods all the while; the paper being all forged, and he passing back from time to time the very moneys which he had received from them or from Bishop & Co. upon similar forged paper only a few days before; and you find that these amounts go on increasing

and increasing, until they reach an enormous sum just before his unfortunate arrest;—and you are to believe, Gentlemen, that these sums which he actually received, according to the showing of his own cash-book, and which have never come back to us, except a small portion,—were loaned by these gentlemen upon fictitious paper, they knowing that the transactions were fictitious, and that they parted with their money to an insane man! And now, when he is arrested for these transactions, and on trial for one of them, and when not more than $70,000 or $75,000 of the moneys are accounted for, and when he has from $300,000 to $400,000 in his pocket, or put away where we can not find it, you are called upon to say that this was not a mercenary forger, that he did not intend to defraud anybody, that this is only the career of a boy grown up to be a man, the result of a career commencing and ending in insanity; by which he acquired in the end a fortune unaccounted for, to the amount of nearly half a million, and if we include that which he obtained before he went to California, amounting to quite that sum! Why, Gentlemen, it would be a great deal better in respect to the acquisition of money, if all men were insane in this way. They would make a great deal more than they could by any course of honesty; and they could be acquitted on the ground of insanity, and soon be restored to their friends,—for there is no means of imprisoning them or keeping them as insane. And that is the condition in which an acquittal would place Huntington. Without making restitution, without disclosing where his money has gone, whether kept in his own coffers, or by his friends, if acquitted on the ground of insanity, his insane career will have ended in making him a millionaire!

Mr. Brady: In your calculation you do not make any allowance for what he has paid for the use of this money.

Mr. Noyes: Suppose he paid $30,000, or $40,000—take the sums which he paid Harbeck & Co., and to Belden, as they are contained in his own cash-book, and the balance is over $300,000 obtained from them alone, which has never been paid; it will not do for the gentlemen to say that Harbeck has not stated how much has been repaid. Huntington's own book shows he has not repaid it all.

A single observation, and I will close for this evening. Some of this money may have been expended upon the houses to which reference has been made; I am not going to allude to them particularly. It is a little remarkable, however, that he should remove from one house to the other, only four or five doors off, and to a house no better than the one he left; and it is very remarkable, the occupants of the former house being a woman and her daughter, that he should have paid the rent for those people for a whole quarter after he removed. He paid rent up to the 1st of August, and he removed in March; how much of

this money may have gone in similar ways, I am unable to say. It is enough for me to suggest that men who acquire money in this way, spend it not unfrequently upon their indulgences; and that there is no way in which money may be spent so lavishly, as upon what the Scripture designates "strange women."

Thanking you for the attention you have given me, and purposing, so far as I am able, not to weary you to-morrow, I will take my leave of you to-night.

The court adjourned to Tuesday morning, at 10 o'clock.

Tuesday, December 30th, 1856.—The court met at 10 o'clock, when Mr. Noyes resumed his argument:—

It is one of the remarkable features of this extraordinary case, Gentlemen, that neither the counsel for the prisoner, nor the medical witnesses who have been examined, deny to him the greatest intellectual shrewdness—a shrewdness certainly in his faculty of accumulation; while they say that he is shallow in the disposition of his funds and entirely indifferent as to the consequences of his crimes. But you are to determine whether a man is insane who is admitted to be in possession of the highest intellectual power, for the purpose of acquiring money by dishonest means. You have seen, from his earliest moments, commencing almost with his childhood, that, when he wished to gratify his desires to escape from censure and perform a task easily and without labor, he always found the means of accomplishing it by some falsehood. I have examined his actual life, and in connection with that his moral life (because in my judgment the actual is made of the moral in this case), down to the time that he was arrested in October last for these forgeries; and I have shown you that by the exercise of this intellectual shrewdness, which is admitted to exist even by his medical friends who have been examined, he has accumulated what is a large fortune; and that he has accumulated it, too, by practicing his devices upon acute and shrewd men; and that those to whom the utmost care and caution in all their dealings in money operations in Wall street is freely imputed, have been the victims of his intellectual shrewdness, connected with an utter disregard of the moral consequences to himself. Why, since last night a statement has been footed up for me, by a friend, showing that the amount which he has received from Harbeck and Co., from August 21st, 1856, to the time of his arrest, was $851,000; the amount received from Belden was $309,000, and so far as we know every dollar of it upon false pretenses; that he was receiving it for the purpose of buying this paper pledged in security, the paper being all forged, and he being enabled to continue transactions from day to day, by paying them back on each successive day the money that he had received at some period shortly before in the same transaction; and we find this intellectual shrewdness so

strong, that with all the evidence that he has been able to give of his spendthrift life, we are not able to account for the expenditure of as much as $100,000, of more than half a million left in his hands. It may be that you will pronounce such a man insane. That you may justly pronounce him insane, in respect to moral consequences, I mean devoid of a just sense of moral consequences, admits of no doubt; and that is the reason why every man charged with crime is arraigned and punished for it. It is the reason why he is put in prison, and excluded from society; and it is the reason why, if I am right in the deductions I have drawn from the evidence in this case, this man should share the fate, not of small, but of great criminals.

Now, is there any doubt upon this subject? It has been suggested, and the matter was made the topic of much declamation on the other side, that a book of entries which Mr. Harbeck had was destroyed. Now, I am free to concede, that if in any case evidence has been voluntarily destroyed, which would make in favor of the prisoner, it is a strong circumstance in his behalf, and you should give it its due weight. I deny, however, that the rule has the slightest application to the case under consideration. Mr. Harbeck, in a fit of nervous excitement, produced by his great losses, and in disgust with himself at being deceived by a sharper, took the book which contained a collected account of these transactions, and had it thrust into the fire. It was, under the circumstances, a mistake, because it has been made use of to affect his evidence. But the question is, did it obliterate any evidence which would throw light on this transaction in favor of the prisoner, in reference to his guilt or innocence of the forgery. If it was to conceal the amount of what is called usurious transactions, it does not affect the question of guilt or innocence a hair. It could not throw light upon any other subject; and the rule I have adverted to is applicable only in a case where evidence has been destroyed that would make for the prisoner. In this case there is no pretense of it. You have the prisoner's own books, showing the money that he received. You have his cash book, stating the receipt of this $21,000 on the 6th of September. You have Stoughtenberg, and Halsey, and the book, aside from the testimony of Harbeck, showing what the transactions were. You have an unerring guide in the testimony produced in court as to what the transactions were, because they were identical with those of Bishop & Co., and their arrangement was to purchase notes and share the profits. So that all that has been said upon this subject, so far as it relates to the question of guilt or innocence, in respect to this and kindred transactions, may be laid out of view. It is like matters in relation to the newspapers, which my learned friend has talked so eloquently about, and without which he would not have been able to make the stirring and eloquent appeal he has made; and he does not profess to lament, but rather rejoices, that these things have occurred, in order that he

might discuss them to the jury. The discussion of matters which are not important, creating false issues and confusing the jury in reference to the real issues in the case, is one of the most skillful means by which able counsel seek to draw away the attention of the jury from the real question.

Now, Gentlemen, to proceed with what occurred after he had accumulated this large amount of money in his hands, for which he has not accounted, and which, as I have argued, shows him to be a mercenary criminal, and not a man who engages in crime for the mere sake of writing or forging, or any thing of that sort, let me advert, in order that you may judge of his sanity or insanity, to the circumstances of his arrest. It is said that he took no pains to escape detection. I say he did. His cash-book was kept enigmatically by his boy, Tracy.* It was opened with "No. 52 Wall Street." This would not show whose book it was, or any thing about it, if it had fallen into other hands after he had left the premises. He was careful to keep an account of those notes in his own handwriting; careful to distinguish between those filled up by Barry, and those filled up by himself or by somebody else. The Barry notes are designated by "Barry," or a "B" and his own by "S." He did take therefore, means to escape detection and punishment, because he did not keep his books in the usual way. He was engaged in a series of forged transactions, and he knew that some caution was necessary, and all the memoranda that he kept was to aid his memory in providing for them, before there should be danger of their being presented; and how was he detected? He had so many of these notes, that, when he came to make new transactions, repeating and carrying them on, it happened on the 8th of October that an old forged note of Phelps, Dodge & Co., which had fallen due, and which he had probably used before, got into the parcel by accident, as bank-notes sometimes adhere to each other; there was some little tenacious substance, spittle perhaps, that kept him from seeing that forged note that was over-due; and Belden did not see it until after he had left the office. That is in evidence in the case. On looking them over and entering them on the envelope, they found this forged note over-due, and they said, "Huntington has left a collateral which is due, and we will present it;" and Belden gives it to his clerk, honestly supposing that it was a note as good as a bank note, and he sent his young man to collect it; and then it was pronounced a forgery. So you see that this little accident, as some would call it—but this direct interposition of Providence, as I say, which always leads to the detection of crime,—stopped the career of this extraordinary criminal, prevented him from carrying it on further, and led to his incarceration. There is no proof in the case that he knew the note was there. All the circumstances show that he did not know it; and

* The boy *Thomas*—Thomas Tracy.

his own conduct when he was charged with it shows that he did not know it; because when immediately confronted, he assumed (what he can assume most successfully) the appearance of an injured and innocent man, and says, "This is all susceptible of explanation. I had this note from Mr. Fitch. It is late in the day, and I will explain it." And although he is held to bail, the conviction of his innocence was so strong, and the confidence of Harbeck & Belden so great, that they became his sureties. They believed, as I did, in his innocence. We could not think that a man of such smooth and plausible exterior and manner was a rogue. There was then no appearance of acknowledged guilt about him, and they became his sureties. It is said that because he did not run away it is evidence of his innocence, or rather of his insanity. Evidence of insanity, that a man does not run away! Where is the law for that? I have never seen any such. It is a circumstance that may, in some cases, be regarded as proof of innocence; but it is not of the slightest importance in reference to a hardened criminal, who has braved out every thing, and who has had impunity by the indulgence of those whom he has defrauded for years, and who believed that he would again succeed in obtaining impunity. You must look at the temper of the man, his habits and course of life, his moral insensibility; and when you find he is destitute of all that makes an honest man in that respect, his flight or his remaining are matters of no considerable moment in determining the question of his guilt. What does he say to show that he understood these were transactions that were criminal? Why, he says, in reference to the two notes of Phelps, Dodge & Co., not only that he got them of Fitch, but that he received them in transactions of about $12,000, giving a plausible account of it (the notes I think were for about $10,000 combined); that the boy Tracy saw the transaction, and knew that those notes came from Fitch. As I said before, the fact of a forged note or two forged notes being in the hands of a broker, doing a large business, would not be a remarkable circumstance; and Belden thought so, and so did Harbeck; and the explanation was so reasonable, and was made with such apparent honesty, that they confided in it; and it was not until the next night after he had been confronted with Fitch, and after Fitch had denied it stoutly to his face, that Huntington acknowledged it, and wept over it, promising to make restitution.

Now, I ask you if this is the conduct of an insane man—a man unconscious of crime—a man who did wrong under the pressure of an inevitable necessity, which he could not control? If it be so, Gentlemen, then all crime is exempt not only from punishment but from censure.

It is said he violated the law of self-preservation in not escaping. Did he violate the law of self-preservation in lying about the notes, and from whom he received them? That was an attempt to screen himself for the time, and is characteristic of all

criminals; they tell falsehoods in reference to crimes with which they are charged. But I remember the argument of my friend in the case of Baker, about the matter of flight; and I apply it here. Baker, you remember, after killing Poole, fled, and was, by a very strange concurrence of circumstances and by unusual energy, brought back. That flight was alleged against him as proof of intentional killing, and in answer to the defence that the killing was done in self-defence; and yet my learned friend argued with all the ability and ingenuity which he possesses, that because persons were present and saw the offense committed, flight was no evidence of guilt; and he induced the judge to charge so. So that whether a man flees or stays, my friend's clients are always innocent (laughter). Why, Gentlemen, this argument, that he did not flee and therefore is innocent, or that he did flee and therefore is innocent, is fit only for that period of life referred to by the *Herald*, in reference to my young friend, when he was playing with toys. It is ridiculous (and I say it with great respect) when addressed to a sensible jury in a case of this description. Applying it to a case in respect to which a trial is now going on, somewhat analogous to this, in Boston,—the trial of Tuckerman for defrauding people to the amount of $150,000, as treasurer to a corporation;—he never fled, and the distinguished counsel in that case may borrow a page from my learned friend's argument, and read it to the jury in Boston.

But, Gentlemen, there is another answer to it. No man can escape as a general thing, successfully from his crimes. The danger in attempting to escape, is now much greater than that connected with remaining. By the aid of electricity and steam, rogues may be anticipated wherever they go, and be brought back; so that as a general rule a rogue shows his skill more in remaining and setting up a plea of insanity, than in attempting to escape! Why, Gentlemen, *Shakspeare* has anticipated all this sort of argument. He says, "This is the excellent foppery of the world that, when we are sick in fortune (often the subject of our own behavior), we make guilty of our disasters the sun, moon, and the stars; as if we were villains by necessity, fools by heavenly compulsion, knaves and thieves by spherical predominance." Now, Gentlemen, let me proceed a little further with this examination. That he had made arrangements of a somewhat permanent character, to remain in the city of New York, is no evidence whatever of his innocence, none of his insanity. Glance for a moment at the career of *Redpath*, in respect of whom there has been no suggestion of insanity, although there may be by the return of the next steamer, if they borrow any thing from us. He was a young man with a salary of only $750 a year, living very much as Huntington lived, driving to his office with fast horses every day, yet scarcely in this attracting the attention of those for whom he was employed. Just as Hunt-

ington did not attract the attention of Harbeck or Belden in reference to his style of living at home. Harbeck says he never was at Huntington's house. The statements made in reference to their dining and introducing him to rich and respectable society, are entirely untrue. They only knew him as a business man; and even if they had information that he was living as he did in 22d street, in a small basement house, they could have had no idea of his extravagance.

Then, as to the question of flight again. Redpath, although he did go out of London, returned; and if remaining is evidence of insanity or innocence in one case, it is in the other. In this case the bubble burst and detection came before the perpetrator of the crime anticipated; and, stunned by the result, he assumed an affectation of innocence, and went to prison. All these things, if they had any design at all, were mere lures to give the appearance of a man permanent in his habits, for we all like better to trust men of that appearance. So it was in reference to obtaining our confidence. He commenced with small sums, then got credit for larger amounts and so went on increasing, to the most astonishing extent, up to the very day of his arrest. Had his wishes and his desires been fully satisfied, in reference to the amount, he would have taken himself where he would have attempted to enjoy his ill-gotten gains, undisturbed by punishment.

I say then, as matter of law, Gentlemen, and I have no doubt the Court will so charge you, that, where money is obtained upon false pretenses, and upon forged paper, as in this case, the intention to defraud, as I argued last evening, is sufficiently manifest and admits of no doubt. It is no defence, that the party himself intended to take up the note. There have been many cases in which a party used the name of a near relation, intending to pay it himself if he could, and if he could not, supposing that his relation would pay, rather than that he should suffer for his crime. In *Regina* vs. *Beard*, in Car. & Payne, precisely in such a case as this, it was decided that the party was guilty of forgery. No man has a right to use the name of another without his consent, upon the idea that he might take up the paper, and no inquiry would be suffered. Huntington knew he was not authorized to use the name of anybody without authority; because in his transactions in relation to the Georgetown Bank, he got a power of attorney to sign the names of the officers, and to protect himself from the guilt of forgery. So, when he used these names on the 6th of September, he knew he was doing it without authority; and even if he provided for the paper, he would be as guilty as if he had not the intention to provide for it.

Now, Gentlemen, I have not called your attention to one very important principle of law; and I have omitted to do so, designedly, to this moment. It lies at the foundation of this case, and of all human transactions that come under investigation in a court of justice. Every man is presumed to be sane, to be of sound dis-

posing mind, until the contrary expressly appears. The prosecution is never bound to show that a man has any mind. If he is a human being, subject to trial; the law assumes that he has a sound mind; and it assumes also, whether the fact be so or not, that he knows the law; and the law will not allow, in reference to that, proof that he did not know it as an excuse for the offense, upon the principle that such a doctrine as that would be eminently dangerous to society. It does allow proof that a man is insane; because it holds that a man has no intention to commit crime under such circumstances, and is not a proper subject of punishment. But you are to start in this case from the commencement, and you are to assume that he was of a sound mind. I have endeavored to bring you to the conclusion on the evidence, without stating the legal position, that his actions show that he was not only of sound mind, but that he was a most cunning and artful man, successful in his operations upon shrewd and skillful men, successful in cheating every man with whom he came in contact, upon whom he practiced his arts. Though the legal proposition and the evidence of his conduct, concur in showing that his actual life has been one of crime, and that the natural consequence is, that his moral life has been bad, and his moral sentiments perverted, so that none of the restraints which prevail among honest men operated on his mind.

Now, I propose to show you, that up to this time, not only Huntington, but his friends, never doubted that he was a man of sound mind. No suggestion had ever been made that his mind was unsound, until we heard it in a letter from the junior Counsel to his friends at the West. That is proved. There is no suggestion from his father, his brother-in-law, or any one, that they thought him insane. His brother-in-law was in New York, and at Huntington's house, last summer. He saw his style of living, he saw his extravagance daily, and was struck with his expenditure; yet he made no remonstrance with him, and did not suggest that his career was one of madness, and not of a man of sound mind. He took from him some of the ill-gotten gains, some of the proceeds of his forgeries, in payment of an old debt, to the amount of several thousand dollars. And Mr. Clarke, honest and respectable man as he is (and I am happy to bear testimony to his integrity, and I regret his misfortune in having such a brother-in-law), would not have taken the money, if he thought he was being paid by an insane man. Yet, he did take it. He did not go back to his honored father, and suggest that this was a course of madness and not of sin. There is one fact Mr. Clarke testifies to, which is controlling in reference to this. I asked him, on cross-examination, if he had not for a considerable time, been looking for an explosion in reference to Huntington's career. He said he had. It was not with reluctance, but it was with great regret that he was obliged to say so. I asked him for what cause;

and he said, because of his wild career of speculation, and the illegitimate objects to which he had directed his attention. Of course he alluded to those spurious banks and dishonest affairs that we have seen him engaged in,—all the results of crime. Clarke had never attributed them to insanity. I asked him the question, "Did your apprehensions of an explosion arise in any degree from fear that he would commit crime?" and he said, it did, that his past career had been such, and his want of moral sense so startling, that he did apprehend an explosion would result from crime, because he was reckless in his speculations and his means of acquiring money. Now, this, Gentlemen, is disinterested testimony, from a source which gives it painfully; and can you doubt at all that this man, from whom such a result was expected, was sane,—when the question of insanity never was suggested until he had been some time in prison, and the senior Counsel had abandoned the defence, and had told Huntington that he had no hope but to plead guilty (I say this on the authority of the junior Counsel), and then the suggestion came from the junior Counsel to his friend? If they had supposed him insane, what course would they have adopted? They would have taken out, if need be, a commission of lunacy, and would have taken care of the property which he had acquired by crime. They would, as honest men, have directed restitution to be made; and I have no doubt Mr. Clarke, an honest man, would have paid back the money received on his old debt, and which came out of the pockets of innocent men in Wall street. They would have restored to his creditors, who have been defrauded, the jewels which are now hidden away, amounting to several thousands, probably hidden away by Huntington for his future use, if he can escape upon the plea of insanity. The friends of Huntington are most respectable people, who would not enjoy the fruits of crime. They did not suggest that he was insane; and it was left to the Counsel to discover it.

There are two defences which men desperate in their extremities usually resort to: one is an *alibi*, the other is *insanity;* and they are both properly viewed with disfavor. But I do not desire, that you should look upon the defence of insanity with disfavor simply because such a defence is set up. Such a defence may successfully be made; and where the insanity really exists, it is proper it should be made; and I commend the independence of counsel who comes into court even against prejudice, in regard to that defence, and manfully stands up to his duty. We should be unworthy of our profession if we were not able to do so, even against the clamors of the world. But I shall proceed to show that the defence here is a mere pretense, and that the learned counsel who has urged it so earnestly upon you, as well as the medical witnesses, have been deceived, and have been deceived by a man artful and cunning,—him whose career in Wall street, you have

been contemplating. In the first place, this defence is sprung upon the prosecution in a secret and clandestine manner. The learned District Attorney, who opened this case, and the counsel associated with him, had no suspicion of it until after the trial commenced; and when my learned associate made the allusion to moral insanity, in his opening, he spoke, of course, in reference to the large transactions of this man, and the great guilt which they revealed—to his moral insensibility, and nothing else. I had not a suspicion during the course of our evidence, that that defence would be relied on, until some one or two questions were put by the Counsel upon the other side, which seemed to look a little that way. In the mean time, what had been done? I say it was sprung upon the prosecution in a clandestine manner. What had been done? The junior Counsel had written letters to the defendant's friends at the West, and they had refused to give their assent to the defence of insanity. Meantime, however, notwithstanding that refusal, there had been a secret examination of the prisoner in the jail, and an examination, undoubtedly, for which he had been prepared. Those interviews took place as early as the middle of November, the trial not commencing until the 16th of December, and the knowledge of those interviews was confined to the breasts of Huntington, the Counsel, and the medical men. No suggestion was made to the District Attorney, or authorities, that this poor man was an unfortunate, and not a criminal. I say, Gentlemen, this betrays a want of confidence in the defence perfectly convincing. If a man is insane there is no necessity for keeping it a secret; it is improper to keep it a secret, it cannot be kept a secret. In this case the defence was not kept a secret from his friends; for we have the extraordinary fact, that the opening speech, which was recited to you, setting up this defence of insanity, was read to a meeting of this man's friends, upon the night we closed the evidence for the prosecution; and then, for the first time, they consented to set it up. It had been in progress for a month; it had been matured by the counsel for the prisoner, and was brought before you on the morning of the day after this remarkable speech was read at this remarkable family meeting. In the allusions to Belden and Harbeck, and their connection with Huntington, my friend the senior Counsel was disposed to be classical. I accept this quotation; and I apply it to those who, with Huntington, got up this defence of insanity, in this way: "*Arcades ambo*" (but I will complete it) "*et cantare pares, et respondere parati.*" They played into each other's hands; they misled the medical men, and they seek to mislead you.

Now, what is the course usually pursued in such cases? Let me see what fairness and justice require. In the case of M'Naughton, who was tried for murdering the secretary of Sir Robert Peel, under the influence of homicidal mania, mistaking him for Sir

Robert, and supposing that he had received grievances for which he was justified in killing him, the defence of insanity was put forward by Sir Alexander Cockburn, now chief justice of the Common Pleas. But counsel went to the prosecution, told them in reference to the defence of insanity; and the prosecution, as well as the prisoner, had medical men to advise and examine about it on the trial. In Townsend's State Trials, vol. i. p. 378, Sir Alexander Cockburn, in opening the case, says,—

> But I shall not leave this part of the case upon the prisoner's statement alone; for I am enabled to lay before you evidence, that will satisfy your minds of the prisoner's insanity since he has been confined within the walls of a prison. He has been visited by members of the medical profession, of the highest intelligence and the greatest skill—not chosen by the prisoner himself, but some of them selected by his friends, and others deputed by the government which my honorable and learned friend, the Solicitor General, represents on the present occasion. They visited the prisoner together several times; they together heard the questions put to him, and noted the answers he gave.

This is the course taken in a defence honestly set up in regard to insanity, or rather, honestly insisted upon in regard to insanity, by honest men. In Freeman's trial the same course was substantially taken. Notice was given beforehand that Freeman was claimed to be insane, by Gov. Seward; and medical men examined him on both sides; and the governor, in that case, objected to his being tried. The statutes of our State forbid the trial of a man who is insane, and say there may be a preliminary inquiry by the jury or by the court, to satisfy its own conscience whether he is sane or not, so that a man who is insane, and incapable of defending himself, may not be put upon trial. That was done in Freeman's case. Medical men on both sides were examined; the greatest possible care was taken; and above all, there was no concealment, no surprise, no springing a defence upon the prosecution after the case had proceeded for two days. There was no *ex-parte* examination by medical men; it was all open and above-board. And all this has been disregarded in this case. Such is the invariable practice, where this defence is set up as it should be. There is further evidence to show that it is a pretense. You have had Dr. Füllgraff, a witness for the defense, who has been the medical attendant of the prisoner for two years prior to his arrest. He was asked the question, carefully to exclude any opinion from him, "Did you ever examine his case with reference to insanity." He said he never had; and there is no proof from Dr. Füllgraff of the state of his health and the course of his life, except his extravagance and the state of his nervous system,—or any thing showing insanity. The medical man who attended him for two years, making in one year a bill of $600 (large, according to my judgment), and $400 or $500 for a portion of the next year, does not suggest insanity. All that he says is, that in consequence of buying so many horses, he told his wife "he must be cracked."

That of course might be remarked in reference to anybody who is eccentric or peculiar. How did Füllgraff regard him? He proves what is equivalent to a forgery,—an attempt to pay a poor woman, keeping a boarding house, by a check upon a bank that had failed, after he had left the house; one of the instances in which honest women, widows often, who try to raise a family, are cheated by men who drive fast horses. The witness regarded him as a man upon whose word no reliance could be placed, and he said he was careful to get his money in advance; in other words, he regarded Huntington, not as a crazy man, but as a reckless swindler and cheat. That is the substance of the evidence of Füllgraff. If he had been insane from his youth, he would have shown his insanity to Dr. Füllgraff, and that intelligent German gentleman, well-educated no doubt in a German university, would have pronounced him insane; because of all men to pronounce other people insane, commend me to a German physician. Yet Dr. Füllgraff is not asked to pronounce him insane. There was nothing of insanity in the diseases for which he prescribed for him; indeed he said he did not have any diseases, although of a highly nervous temperament. Why omit to examine Dr. Füllgraff on this subject? Why was it left to *ex parte* examination by these medical gentlemen in prison, an examination secretly made, and for which Huntington was prepared? Dr. Füllgraff could have told whether he complained of pains in his head, and of blacksmiths' sparks before his eyes, as he did to Dr. Parker. But he mentions nothing about them. He says Huntington was hypochondriacal or notional, or nervous, that he sent two or three times a day for him, when it was not necessary, and he told him so. But is that any thing strange? Could any sane man carry on such operations as these, frauds upon frauds, to the amount of thousands, and not feel nervous or be seemingly hypochondriacal? It is not in human nature to be calm and undisturbed. I say, then, that the testimony of Dr. Füllgraff is an item of the utmost importance upon the question whether this is real insanity, or whether it is only simulated. And, moreover, if he was insane from his youth, where are the medical men at Geneva, or those who attended him prior to 1854, to speak in reference to his ailments and his mental and physical condition? Not one has been called; but it is left to private examinations in jail, lasting twelve or fifteen minutes in one instance, and three quarters of an hour in another, to develop that which is to explain all this most extraordinary conduct as being the conduct of a madman. Dr. Füllgraff mentions one circumstance in connection with the coachman, Carey, which is somewhat relied upon as evidence of his insanity. It is nothing at all, giving it the utmost weight, but an eccentricity. But eccentricity is no excuse for crime, and no evidence of insanity, taken by itself. The Doctor says that Huntington's wife had been ill, and was in the third story, in a

somewhat nervous condition; that he had music in his house, from a brass band of musicians who went round during the summer; and the Doctor objected to it. The music, it seems, was in the lower story, and the friends of Huntington were there—his wife's sister and some other persons, young ladies, I believe. Huntington insisted that while it would not injure his wife, it would be a pleasant entertainment for his friends, and he differed from Dr. Füllgraff, in reference to its effect upon his wife. It is not suggested that he got the music there for the purpose of annoying his wife; and his own statement shows that he did it because he supposed it would please her. It is certainly no evidence of insanity that he entertained his visitors with music from a brass band on a summer evening. It was probably only preparatory to that scene of joyousness upon which he was going to enter at Rockaway, where there is music every day, and where he was so anxious to bring his wife that he said he would hire a special car on the railroad, and swing a hammock in it; and with an energy for which he is remarkable, he proposed to do it immediately; but the Doctor said—wait a day or two. Is that evidence of insanity? It is like his energy in the Buffalo Cemetery scheme, where he wanted to put 500 men at once to work, to clear and lay out the land. It shows that he applied his mind with Napoleonic energy to all his undertakings. It shows no insanity. Suppose I admit that all this is folly, such as would not ordinarily characterize a sensible man; it is the folly of every criminal. You cannot find a man who throws himself loose from all moral restraints, and the restraints of society, that will not in time form precisely such a character. He is reckless in his expenditure, reckless in his mode of doing every thing in which he engages, reckless in language; in other words, it is the recklessness of crime, manifested in every thing which goes to make up the moral character, and is no evidence whatever of insanity.

Now, this defence of insanity is very easily simulated. I will refer first to *Ray*, an author who is a sort of visionary upon the subject of insanity.

At sec. 341, he says,—

> The supposed insurmountable difficulty of distinguishing between feigned and real insanity, &c.

There was a time, then, when it was supposed to be a task of the utmost difficulty to detect it. Then he says,—

> That some difficulty has been experienced, and given rise to much perplexity and mistake, cannot be denied; but it is to be considered whether it has not arisen, less from the obscurity of the subject, than from the imperfect means that have been generally applied to its elucidation. The opinions of physicians which are ordinarily taken in doubtful cases, have been received with a deference that was warranted more by general professional reputation than by superior knowledge of this particular disease.

That caution may be applicable to the evidence of some of the medical men who have been examined in this case. There is no difficulty, as a general thing, in proving every man insane who

has committed a series of crimes, if you adopt Dr. Ray's designation. Every man, according to this book, as I shall show by and by, who is insensible to moral consequences, no matter what may be his intellectual shrewdness, is regarded by this writer as insane and free from moral responsibility,—a doctrine which the law not only condemns, but abhors. *Beck*, vol. i, at page 726, says, under the head of "Feigned and Concealed Insanity:"

The medical witness is often required to decide the actual existence of insanity; and it therefore behooves him to be well acquainted with its actual symptoms. It is in this point of view, that the enumeration given in the previous section becomes valuable. It will also materially aid in detecting feigned or concealed insanity. There is no disease, says Zacchias, more easily feigned, or more difficult of detection, than the one under consideration. And hence, he remarks, many great men, of ancient times, in order to elude the danger that impended over them, have pretended it; as Ulysses, Solon, and Brutus, the expeller of the Tarquins. In our day, however, madness is most commonly feigned for the purpose of escaping the punishment due to crime; and the responsibility of the medical examiner is consequently great.

A responsibility which, I regret to say, was not felt by the medical men in this case, and which they did not understand or discharge.

It is his duty, and should be his privilege, to spend several days in the examination of a lunatic, before he pronounces a decided opinion. If this be allowed to him, and also, if he be enabled to obtain a complete history of the antecedent circumstances, much may be effected towards forming a correct opinion.

In reference to that wakeful watchfulness, which is a symptom of insanity that pretenders are unable to simulate for any length of time, I shall show that Huntington slept as sweetly as an infant upon its mother's bosom, notwithstanding his denial to Dr. Parker. Now, Gentlemen, insanity has been feigned over and over again. The learned counsel who opened this case referred to the case of *Hamlet*, who was reasoning with his companion to prove that his actions were the result of madness, which a lunatic never does. He always tries to prove that his actions are the result of sanity. But I read *Hamlet* entirely different from my learned friend. Hamlet was a simulated lunatic,* and Ophelia was the real one. Hamlet supposed he had discovered that his father had been basely murdered, by the connivance of his mother; and he had not evidence enough to bring the murderers to punishment, for he did not believe the Ghost would be quite tangible in a court of justice, or anywhere else; so he feigned insanity, for the purpose of detecting it. Counsel quotes Hamlet as saying to Laertes,

> "Was't Hamlet wronged Laertes? Never, Hamlet:
> If Hamlet from himself be ta'en away,
> And when he's not himself does wrong Laertes,
> Then Hamlet does it not: Hamlet denies it.
> Who does it then? His madness. If't be so,
> Hamlet is of the faction that is wronged;
> His madness is poor Hamlet's enemy."

* The critics have expressed diverse opinions on this subject. *Verplank* says, "Besides the vexed questions of the nature and degree of his mental malady, the intellectual peculiarities, and the moral cast of his character and conduct, have also afforded matter for much discussion."

Did an insane man ever undertake to reason that he was insane, and to ascribe his actions to insanity? Never! Why, Polonius detected that it was feigned, for he says,—"Tho' this be madness, yet there is method in it." *

And in the interview with his mother, when she says, "This is the very coinage of your brain," Hamlet himself discloses that he has been simulating, and replies:

> "My pulse as yours doth temperately keep time,
> And makes as healthful music. It is not madness
> What I have uttered; bring me to the test,
> And I the matter will re-word which madness would gambol from."

Why, Gentlemen, those who get up this defence take a leaf from Shakspeare; and they mistake the man who simulated madness to detect a great crime. Here it is simulated for the purpose of covering, not so great a crime, but the greatest known in a commercial community. Now, let us look at his interview with Dr. Parker. I shall speak of both these medical gentlemen who have been called with all possible respect consistent with the discharge of my duty as counsel. One of them, Dr. Parker, is my personal friend, my almost daily associate; and nothing has given me more regret than that the discharge of an imperative duty should compel me to examine his course in this particular case with some degree of severity. I have the greatest possible respect, also, for Dr. Gilman, although I do not know him as well. But these personal considerations must be laid out of view. I must examine this matter fully; and I shall endeavor to do it honestly, and so far as I am capable of knowing myself, without perverting any of the evidence, or doing an injustice to those gentlemen. I complain (and I think I have a right on behalf of the public and in the name of the law) that they took no precautions. To have the examinations honest and fair, I think it was the duty of the medical examiners to take precautions to have persons present representing the public. That duty, in some sense, belonged to the counsel, and some share of the censure falls upon them. I submit, as matter of right and duty, when great crimes have been committed, and when the alleged defence is insanity, and nobody is told of it, that those who invent or wish to set it up and believe it to exist, should take some care to procure a fair presentment of the question. But both these medical examiners seem to have relied upon the statements of Huntington alone, in forming their opinions. True, their opinions thus formed are, they say, sustained by the history of the man. But they had a theory to support. Dr. Ray cautions against belief in the testimony of medical men who have theories

* Three lines farther on Polonius says, "How pregnant sometimes his replies are! A happiness that madness often hits on, which reason and sanity could not so prosperously be delivered of." And in the same scene (scene 2, act ii.) he says to the Queen, "That he is mad, 'tis true: 'tis true 'tis pity, and pity 'tis 'tis true."

to support. Dr. Gilman does the same thing in his recently published address. But their opinions, in reference to his insanity, are based upon these interviews, and upon his conversations.

Now let me examine those considerations, to see whether they were not all false upon the part of Huntington. I will take the account of them given by Dr. Parker. I premise, however, that Huntington's statements to them are not to be taken as evidence, because a man cannot give his own declarations in evidence, to prove his innocence, whether it be upon a question of sanity or insanity. They are a proper foundation for the medical opinions, if they are proved true in the case; and if they are proved untrue, they take away from the effect of the medical opinion altogether. I put it to you whether you could place any great confidence in the declarations of a man of the character of Huntington, in prison for this great offense, made to a medical examiner, with a view to his defence of insanity. The very fact that these questions were put to him would show him that it was a medical examiner who had come; and the learned gentlemen who conducted this part of the case, and who wrote the letter to his friends west, no doubt informed him that such an examination would be made. Huntington knew it was necessary to play a part, and I shall show you from his own declarations—comparing them with the evidence in the case—that he did play his part. In the first place, Dr. Parker says he asked him whether he had laid away any thing of his great accumulations; and he said he had not. That was utterly untrue, every word of it. Dr. Parker bases his opinion upon the fact, that he had saved nothing of his gains; the fact is not true. He had bought that place in the country, worth something—not very much, I concede. He had concealed jewelry, which is something. He had concealed from $350,000, to $400,000, which there is no account of. So that it is utterly and totally false, that he had reserved nothing. If it could be shown that by a career of extravagance? he had disposed of all this money, that might be strong ground to sustain the medical opinion; but the man who knows all about it, who sits here, and from time to time instructs counsel in his defence, has not called a witness to prove what has become of the money he has acquired. I say, therefore, he was acting a part, and, in consistency with his general conduct, he told Dr. Parker a series of falsehoods. There is another remarkable fact. The Doctor asked him if he had expended money upon women, supposing that was the ordinary course of such men; he told the Doctor that he had not, that his reputation in reference to women was undeserved; that his reputation in reference to spending money upon strange women was undeserved, showing that he felt that sting upon his reputation, that he knew the moral degradation of the man who does so; and he attempted to ingratiate himself with Dr. Parker, by a denial.

It is of a piece with his conduct in getting a power of attor-

ney to sign spurious bank notes; and shows what is universally true of every bad man,—that he never can entirely eradicate the moral notions which have been implanted in his mind; and, although he may disregard them in his habitual conduct, they will at times remind him what an atrocious transgressor he is. Why, Gentlemen, he had fitted up a house near his own, of a questionable character, and left it in the possession of a woman, paying the rent for some four months in advance; and there is no explanation given of it. My friends knew it; because it was alluded to in the opening of the junior Counsel, who said we might attempt to attach to the two houses in which he was interested, besides the one in which he lived, a character of which he would not speak. But, more than this, he told Dr. Parker that he did not sleep. He told him that he had strange sounds in his head, and that there were scintillations of light, or, as he termed it, "blacksmiths' sparks" before his eyes. I have already called your attention to the fact, that he never complained of any such thing to Dr. Füllgraff, for the two years that he attended him,—or of any want of sleep, or noise in his head, or these scintillations of light. Dr. Parker says, they indicate an unsound condition of the nerves of the brain, because such sparks do appear with persons having an unsound organization of the brain; and therefore he thinks he was unsound. Now, I will call a host of witnesses to show that this statement of Huntington's is utterly untrue. Let us go back for a moment to the evening of the 19th of December, after we rested our case, and when the case of the defence was utterly hopeless unless insanity could be relied upon —that secret defence, which had been in embryo for a month. Place yourself among that family circle assembled to hear the speech of my friend read,—which had been prepared not only for the purpose of being read before you, if his friends sanctioned it, but to have them sanction the defence of insanity. There was his father; there was his brother-in-law; there was his wife, the companion of his bed, who knew whether his nights were sleepless or not; and that speech was read to them, sanctioned by them, and delivered here; and as well by their authority, as by the authority of the prisoner at the bar. From that speech I make an extract, which shows whether Huntington spoke the truth to Dr. Parker. After speaking of numerous forgeries, and imputing them to madness, the learned counsel proceeds:—

From the time the mistaken prosperity of the defendant commenced, something over a year ago, he has slept, and still continues to sleep, sweetly. With such a weight of guilt as is here charged on him, no man, able to distinguish between the right and wrong of such deeds, could fail to stagger beneath the enormity of such crime. He would toss him on his bed, wakefully, under a troubled conscience, and would turn him on his pillow, and groan heavily from a heart crammed with remorse. But he slept sweetly, awoke cheerily, and pursued his *business* and followed his pleasures without a thought of guilt.

Now, Gentlemen, after this, and when the statement of want of sleep is relied upon by Dr. Parker as one of the main facts upon which he bases his opinion, are you to believe it? Was he not lying, was he not acting in accordance with that want of principle which characterized his whole life; and did he not, after he had told Dr. Parker this falsehood, go to his bed and "sleep soundly," and "awake cheerily," and has he not done so from that day to this? If he had not, his companion in prison or some one else could be called, to prove that he is a wakeful, trampling, noisy maniac, or bordering upon it. What becomes, then, of this medical testimony, when you find falsehood written upon all which it is based on? When you find it contrived by the prisoner, to the deception of honest and confiding medical men? Although, the credulity which seems to have been exhibited by them, in talking to this prisoner upon the supposition that he would speak truth and nothing but truth, is as remarkable as their want of care to ascertain the truth in regard to his insanity. I ask you if this does not put an end to all the testimony of Dr. Parker, which is based upon these conversations? The result is that honest Dr. Parker was deceived and defrauded. The man who had been successful in getting $100,000 from shrewd moneyed men, also succeeded, by the same cunning and artifice and falsehood, manifested in a little different way, in getting an honest opinion in his favor from Dr. Parker to aid him in his defence when called to answer for his multiplied wrongs. More than this, Gentlemen, Dr. Parker told you that every fact in the elaborate questions put to him by the learned counsel in writing, while it was consistent with insanity, was also consistent with utter moral recklessness; and the recklessness of this man has been exhibited in all his transactions from his cradle to his prison.

I need not, after this, spend a great deal of time in commenting upon the testimony of Dr. Gilman. He does not give any relation of what Huntington said to him, differing in any degree from Dr. Parker, indeed he does not give as much. A great and wonderful lack of astuteness which struck me was the acknowledgment of Dr. Gilman on cross-examination, that he never put the question "why he committed the forgeries?" You remember I told the Doctor I would have cross-examined him better than he had. Going to examine him upon the question of being a monomaniac upon the subject of forgery, he did not ask him why he committed it. Whether it was because he thought he would not get a proper answer, or that he did not believe in monomania at all, I do not know. Dr. Parker differs from Dr. Gilman. The latter says he does not believe in monomania,—that if a man is insane he is insane *in toto*. Let us examine that opinion for a moment.

I know an accomplished and intellectual lady, who thought her feet were made of glass; she was clearly insane in regard to that subject. I have seen her at the dinner table, move the chairs

all out of the way, for fear her feet would be smashed; suppose she had stolen any thing,—she had as nice moral sense, as delicate a perception of right and wrong, as any person I ever knew; yet she would have been insane within Dr. Gilman's definition. You have heard of a man who thought himself a tea-pot; suppose he had taken a fancy to a silver tea-pot, stealing a twin brother to himself,—he would be acquitted of theft upon the ground of insanity, although he was highly intellectual, knew the difference between right and wrong, and could write an essay upon morals. This doctrine will not do; it is absurd when applied to the practical duties of life, and to the obligations which are imposed upon a man by his existence in society. Why, Gentlemen, spiritualism has been rife lately. Many consider that those who believe in spiritual communications, are insane upon that subject. We have an eminent example in this city. Suppose that any of those persons committed crime—robbery or murder; they are all to be acquitted upon Dr. Gilman's notion! they are all to be acquitted upon the ground of insanity; because the argument is, that if a man's brain is unsound in a single particular, it indicates a total unsoundness of the brain, and you cannot rely upon the man in any respect! He gave a most extraordinary instance; why, he said, "If Huntington, Mr. Noyes, (which God forbid) should rise up now and stab you to the heart, I should hold him irresponsible:" such a sentiment as that sent a thrill of horror through the court. But I understood this man Huntington; I had no apprehension of such a calamity, and I trust I was unmoved; but it is an example of the abominable and extravagant sentiments to which I allude, as shown by Dr. Gilman in that answer; and his argument is the argument of Dr. Ray,—that if the mind manifests itself in a single particular indicating mental unsoundness, the seat of that irregularity being in the brain, the whole brain is diseased, and therefore the man is not an accountable agent: that has never been the law of the land; it is only found in some of the medical schools, and I trust in God it will never be the law of the land.

A great deal has been said by the counsel on the other side, upon the inquiry why we did not call medical witnesses. We did not think it necessary to dignify this case, when we had discovered what was the ground of defence, by putting witnesses upon the stand to controvert these extravagant and absurd opinions; first, because they were in opposition to the law of the land; next, because they are the results and emanations of a peculiar school of medicine upon this subject; and we had no confidence in that which seeks to change the law of the land, and the settled notions of competent medical men upon this subject, and to adopt a new theory which removes all moral responsibility. We did not think it necessary; and I trust you will commend the course which we took, for it was taken advisedly. I will observe that Dr. Parker and Dr. Gilman destroy each other. Dr. Parker says, he is a mono-

maniac (that is, insane on one or more subjects), upon the subject of making forged paper, and that getting up burial societies, spurious banks, forging orders for magnets and excuses at school, forging compositions and lying, are all manifestations of that mania,—the tendency to make forged paper. I am not exactly able to see that; perhaps the Doctor does. Dr. Gilman says, he is insane entirely, and has no responsibility for any thing—that it is not a mania for theft or for homicide, or lying, or for any of the other four or five classes into which monomania is divided; but it is a general insanity. What reliance is to be placed upon medical testimony which differs in itself, and which above all things is based upon statements that are proved to be false?

At page 148 of Wharton & Stillé, there are definitions of this mania, but there is no such thing mentioned as a mania for forgery. That my learned friend concedes. He calls it *ferro-mania*. Well, if you go back to the idea of the forgery or manipulating any thing until you get it into shape, it would not apply to writing it all; it would rather be *ferro-mania*, to invent an instrument to kill. So that, it seems to me, the designation is not a happy one by any means. It is a mania in reference to paper. I do not know but that it might be called *papyro-mania*; but I think that kind of mania would satisfy itself by using paper and writing forged names upon it. Huntington's was what my friend the District Attorney calls it—a *money-mania*—an insatiable desire to get money by any means,—forged paper, spurious bank notes, or anything else. The learned Counsel suggested that it might be *pseudo-mania*. Let us see what that is. Lying by means of paper—forged paper. But *pseudo-mania* is an innocent lying, a propensity to exaggerate, and is generally harmless. In short, Gentlemen, there is nothing in the books, and it never before was heard of that a man is insane who is a forger. Never! Both these Doctors here place their opinion chiefly upon the ground of his great insensibility to the consequences of his crimes; or, as Dr. Gilman expresses it, to his impassivity. I should like to know whether a man who had led such a life as Huntington has for thirty years, could not assume an indifference which he did not feel. Must he not have done it in his repeated intercourse with his victims when he got their money, without their knowing that he was cheating them. Why, Gentlemen, a man's character is formed long before he is thirty-five; and if he is a cool, experienced man, he can assume indifference always when he wishes, and especially when he is playing a part. No wonder that Huntington was not startled, when Dr. Gilman said to him, "What a terrible inheritance it is for your child!" He cared nothing about it. It was nothing but the recklessness of crime. Now, Gentlemen, the law sanctions no such rule as that which these learned doctors have relied upon; and I call your attention to the fact that we are now to have in this great commercial

metropolis, the doctrine advanced, and with success (if it succeeds at all), for the first time, that a recklessness in crime, and utter disregard of its moral consequences, is to be evidence of insanity, so that the criminal is to escape punishment! And it is no wonder, therefore, that the newspapers, regarding themselves as the conservators of public right, as sentinels upon the watch-towers, to give notice of those sentiments which are to disorganize the community, should speak of it in tones of reprobation. It is a proper subject to address to a jury, that, for the first time in our jurisprudence, the settled law of the land, administered for centuries by the wisest and the purest men, is to be set aside, in obedience to the opinion of two medical gentlemen upon a very imperfect examination, starting notions which are new and most remarkable in medical science, especially in their application to a case of this description. And for the purpose of showing how startling this is, I read to both of these medical gentlemen the law, as it is contained in the opinion of the Twelve Judges in the case of M'Naughton, and the law as laid down by our own Supreme Court, which furnishes the rule of conduct for you; and both of them denied that it was their rule, and said they did not agree with it. Dr. Gilman said then, and has said in an Address which he has delivered to a class of medical students, that the law of the land in this respect is all nonsense. This Address was delivered on the 20th of October last, upon the "Relations of the Medical to the Legal Profession." He has some very just observations in regard to the treatment which medical men should give to counsel who are cross-examining them, and I am glad to see so much liberality of views upon the part of the Doctor; but I will read some things that he says, for the purpose of showing that his own cautions have been unheeded, both by himself and Dr. Parker.

He says "Another element often gives one-sidedness to medical testimony: Physicians commit themselves early in a cause," —in this case they committed themselves early, in prison—"perhaps even before the trial begins,"—he did it,—"to opinions which, when compelled on cross-examination to review, they find require modifications." He did not require any modifications. He would not put himself in the position of defining what the mania was, and it was impossible therefore to approach him. "Now it is often very difficult to make these modifications, be they ever so necessary."

And then he goes on to counsel medical gentlemen about committing themselves before the trial. In page 18 he has this opinion: "Disease, disorder, decay, all belong to the body and to the body only; and consequently we must place the essential seat of insanity in the body, not in the mind."

The law looks to the mind, to its mental capacity. It may be feeble, slow, or irregular in its operations, but if there is mind

enough left to know that the thing the party intends to do is wrong, or contrary to law, there is a criminal intention, because there is an intention to do wrong and violate law. The Doctor says the mind has nothing to do with it; so that for the purpose of moral responsibility, and deciding whether or not a person was morally insane, he would not regard the most highly cultivated intellect. He might pronounce even Newton insane, because within the last few years it has been ascertained that he was a believer in the power of transmuting substances into gold, and that he spent great portions of his time in the study of Alchemy, a thing which has long ago been exploded. If therefore one strange irregularity of intellect, manifesting itself in notions which nobody believes, is an evidence of insanity, Newton was insane. No matter, therefore, how poor or how great the ability of a man's mind is, it has nothing to do with the question of moral responsibility! What then is a man? a clod of the earth—never anything but a clod; and you are to punish or not to punish the clod, to have nothing to do with the mind which is immortal! Now the Doctor goes on, giving advice to these young gentlemen: "The first difficulty you encounter is with the definition of insanity. This is frequently asked by the lawyers, 'per ambages' to use one of their own phrases. The prudent course is to decline, saying to the court that it is impossible to comprehend all the phenomena of insanity within the limits of a definition. If, however, you desire to give one, be sure that it is the result of careful and patient previous thought. If you are quite sure that you can recollect a definition which satisfied your mind, in your study, you may give it; but rely upon it if you try to extemporize a definition it will be a bad one. The best I have been able to make is this; 'Insanity is a disease of the brain by which the freedom of the will is impaired.'" The law says that is not the definition.

The law says in reference to all a man's actions, even to the most solemn act of his life, the disposition of his property when about to descend into the grave, that, if he has understanding enough to know that he is the owner of property, however weak and feeble that understanding may be, and to know how he means to dispose of it, he has a right to dispose of it. That was decided in Alice Lispenard's case. It is the rule in reference to examining a witness who is a lunatic, as we find in the case of *Regina* vs. *Hill.* (2 Denison's Crown Cases, 254.) This was an indictment for manslaughter, I do not know but that it was upon the keeper of a prison. The person accused in this case, was to be convicted upon the testimony of a responsible person, of course;—one who could take an oath and understand it, and who, if he committed perjury, was liable to punishment; yet a confessed lunatic, insane upon particular topics, was admitted to be sworn upon the responsibility of his oath, and, of course, as being liable to the penalties of per-

jury if he did not tell the story right, because he had understanding enough to tell it right. According to Dr. Gilman, that witness was improperly admitted! He was to be considered insane upon all subjects, and not responsible for any thing! If he had stabbed the counsel in court, he would not have been responsible! Yet one of the most careful judges said he was satisfied he could testify, under the responsibility of an oath.

The Doctor goes on, the object of the Address being to show that the law of the land is wrong:—

Here is the true theory of insanity,—moral or intellectual change, dependent on disease of the brain. I have already said that the law has had for ages one favorite test of insanity. It is at least two hundred years old, and consists in "knowing right from wrong." It is a very striking illustration of the non-progressive character of the law, that the Twelve Judges of England when applied to by the House of Lords on this subject, in 1851, did not advance one step beyond this old test, but declared a person was punishable if he knew, at the time of committing the crime, that he was acting contrary to the law of the land. And again, they say, "To establish a defence on the ground of insanity, it must be proved that the party did not know he was doing wrong."

That is the law, as he says, declared in 1851. He objects to that, that it is old law. He says,

Now, the utter futility of this test has been familiarly known to physicians for nearly a century.

And he goes on to show that it is not to be believed. Further on he says,—

This is the true theory of monomania, and it is of the utmost importance in legal medicine, as teaching us the impropriety of ever speaking of any of the acts of monomania as those of a sane man. In relation to partial insanity, the law deems it necessary in criminal cases, that the delusion under which the party labors should be connected with or prompt to the crime he has committed. This notion the medical witness should never for a moment countenance.

Again he says,—

There is yet one other form of insanity, which though fortunately rare, sometimes demands investigation in courts of justice; and in which I regret to say that a majority of the legal profession have yet to acquire the first rational idea. *I refer to moral insanity.*

This form of madness presents to us the appalling spectacle of a disease of the brain, the chief symptom of which is an irresistible impulse to commit crime.

He admits that in some cases a homicidal mania and mania for theft. That was the case of the man in Brooklyn, who had thrown down the young woman and taken off her shoes. The irresistible impulse to commit crime, with a want of knowledge that it is wrong, or against a law,—that is an irresistible impulse which the law recognizes. Take the case of *Abner Rogers*, referred to here. He was an inmate of a lunatic asylum. I believe he killed one of the keepers. He supposed there was a conspiracy to take away his life—that the keeper and other prisoners had entered into this conspiracy; and, although it was all imaginary, he killed the keeper, as he supposed, in self-defense. There was an irresistible impulse to kill that man, but he thought he was exercising the law of self-defense. He was acquitted. What did

he do afterwards? So possessed was he with the idea, that to escape those he considered were conspiring against him, he threw himself from a window and dashed his brains out. This is an irresistible impulse, over which the intellect has no power, so that the party does not know he is doing wrong or acting contrary to law. If he does, he is criminal.

These physicians, in seeking to overturn the law, are guilty of flagrant presumption, usurping the province of the lawmakers and of the judge. If a man who has committed forgery has a weak intellect, the court will consider that matter in passing sentence. If it should appear after conviction that he is not a fit subject for punishment, then the executive may interpose. But if a party has any intellect, so as to know the right from the wrong, so as to be able to refrain from doing wrong, he is bound to refrain. This world is indeed a place of trial, but every man is bound to resist his tendencies to evil; bound to stop, and not to give way to the first approach or temptation to evil. If he goes on indulging crime he will in time become insensible to its consequences and to moral restraints. He should not, therefore, be permitted by sanction of law to take the first departure from right. The law is intended, in its administration, for the moral government of mankind, so far as it relates to the right of person, character and property; and if a man knows that he is doing what is wrong and against law, in reference to the person, or character, or property of another, he is bound to refrain, no matter how weak or erratic his intellect may be; and if he does not refrain, he is a fit subject of punishment, by the law of man and by the law of God.

Now I will call your attention for a moment to cases upon this subject, to show what an extraordinary violation of law is attempted by the defence in this case, upon the authority of these medical gentlemen, in the course of which I shall show that Ray attempts to overthrow the law; and I shall show how that has been met in this country, as well as abroad. I shall refer to the leading cases here and in England, doing it with all the brevity I can, because my remarks in this case are, I am very glad to say, drawing to a close. Now, to show that Ray entertains this doctrine, I will refer to one or two sections, which I regard as abhorrent to the interests of society. He examines, prior to section 22, this doctrine of right and wrong, contending that it is improper; and then he says,—

> If then the knowledge of good and evil, right and wrong, and the power of design are to be considered as fallacious tests of responsibility, notwithstanding they have proved the death-warrant of many a wretched maniac, let us come back to that proposed by Erskine, *delusion*—and see if that will bear a more rigid scrutiny, when viewed by the light of modern discovery.

So he objects to the ground taken by the great Erskine, on the trial of Hatfield, and he brings himself upon the same ground with Dr. Gilman. At sec. 145 he says,—

There is another very common and well-marked form of insanity, the manifestations of which are chiefly confined to the moral sentiments. Its characteristic feature is that of excitement alternating with depression; the two conditions varying considerably, in different cases, in point of intensity, and also—as well as the intervening interval—in point of duration.

He goes on to show what makes a man totally insane. He says,—

With all this there is generally an utter disregard of the feelings of others, an imperious even to tyrannical deportment towards those who are dependent upon him, and a disposition to trample upon all domestic conveniences and proprieties.

This certainly was not Huntington's situation. I refer to section 151, where the same subject is continued; and he states a case, in which a patient, in his judgment, would not be considered responsible, although he states this:—

I neither acted from an irresistible impulse, nor upon the belief that I was doing right. I knew perfectly well I was doing wrong, and I might have refrained if I had pleased. I did thus and so because I *loved* to do it. It gave me an indescribable pleasure to do wrong.

Yet according to his view, that person was irresponsible. Now I will refer to M'Naughton's case for a moment, in 1st Townsend, 323. The first question there put to the Judges, is,—

What is the law respecting alleged crimes, committed by persons afflicted with insane delusion in respect of one or more particular subjects, or persons, as, for instance, where at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some public benefit.

To that the judges say,—

Assuming that your Lordships' inquiries are confined to those persons who labor under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is, nevertheless, punishable, according to the nature of the crime committed, if he knew at the time of committing such crime, that he was doing it contrary to law, by which expression we understand your Lordships to mean the law of the land.

Here is a case in which they assumed him to be a lunatic: they had no right to make such a presumption. Yet the Judges held that he was responsible, if acting contrary to law and he knew it.

To the second and third questions submitted, the Judges answer,—

That the jury ought to be told in all cases, that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved, that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind—

Not as Dr. Gilman here says, of the body—

as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong.

* * * * * * * *

If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable, and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require.

I observe, in reference to this rule, that Dr. Parker admits Huntington was under no delusion in regard to any act whatever. He was only under a degree of astonishing moral insensibility to the consequences of crime. There might be a defence to forgery, founded upon insanity, if he was under the delusion that he had a right and was authorized to use the name of everybody. To the fourth question put, the Judges say,—

If, under the influence of his delusion, he supposes another man, to be in the act, of attempting to take away his life, and he kills that man as he supposes in self-defense he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge of such supposed injury, he would be liable to punishment.

Dr. Gilman would hold that man irresponsible; because he would say he was under a delusion in reference to the revenge in regard to which he was desirous to gratify himself, or the subject of it; that such delusion indicates a total insanity, and therefore he is irresponsible. That, as you have seen, Gentlemen, is not the law of the land.

Now I will refer you for a moment to Freeman's case. Freeman was a negro boy, sent to the State-prison, as he believed, wrongfully; and he became very morbid in prison. He came out; and he labored under a sense of injustice, considering that he ought to be paid wages by somebody for the long service he had rendered in prison. This conduct was extraordinary. Laboring under this very gross delusion, he went in the dead of night to the house of Mr. Van Nest, and, I believe, before he left killed all the inmates. The defence was that he had a homicidal mania—a tendency to commit murder, in revenge for what he supposed were wrongs inflicted upon him; and that he was incapable not only of resisting the tendency, but the ground assumed by his counsel was that the delusion was so great that he did not know the difference between right and wrong. The case was put, by Gov. Seward, upon the law of the land; and the jury found that he was in a situation to know right from wrong. He died afterwards in prison, a new trial having been granted, on the ground that the jury were improperly empaneled; and it was discovered, on dissecting him, that his brain was diseased. At page 469, Judge Whiting, in his charge to the jury, says,—

To establish the plea of insanity, it must be clearly proved that the party is laboring under such a defect of reason, from disease of the mind, as not to know the nature of the act he was doing; or, if he did know it, that he did not know he was

doing what was wrong. He must be laboring under that kind of mental aberration which satisfies the jury that the prisoner was quite unaware of the nature, character, and consequences of the act he was committing.

Did not Huntington know this was a forged note, and that he could get money upon it, and that the party who trusted to it would be cheated?

If some disease was the acting power within him, which he could not resist; or if he had not sufficient use of his reason to control the passions which prompted the murder, he is not responsible; and the Jury must be satisfied that it was an absolute dispossession of the free and natural agency of his mind.

That charge was sustained by the Court, and a new trial was granted, for other reasons.

Judge Beardsley says, at page 485, when the case was up for review:

At the same time it would be well to impress distinctly on the minds of jurors, that they are to gauge the mental capacity of the prisoner, in order to determine whether he is so far sane as to be competent in mind to make his defence, if he has one; for, unless his faculties are equal to that task, he is not in a fit condition to be put on trial. For the purpose of such a trial, the law regards a person disabled by disease, as *non compos mentis;* and he would be pronounced unhesitatingly to be insane, within the true intent and meaning of this statute. Where insanity is interposed as a defence to an indictment for an alleged crime, the inquiry is always brought down to the single question of capacity to distinguish between right and wrong at the time when the act was done. In such cases, the jury should be instructed that it must be clearly proved, that at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing—or if he did know it, that he did not know he was doing wrong.

I will not occupy your time by referring to other cases. I refer your Honor to Pyne's case, 2d Barbour, 556. If I understand the opening of the junior Counsel, he put his plea upon the same ground; but that has been somewhat enlarged since, of course from the necessities of the case.

Now, Dr. Beck was at one time disposed to adopt the extravagant notions in relation to insanity, called moral insanity, which are found in some of the books; but the Doctor was too wise and too prudent a man not to review his opinions, in view of the consequences to which they lead; and he was too honest to go to his honored grave, as he has gone, without leaving on record the evidence of the change which had taken place in his opinions. They are contained in his last book, published in 1850—tenth edition. After referring to this subject of mental hallucination and moral insanity, he says,—

It is from long-continued and anxious reflection on the difficulties which thus present themselves to the consideration of the medical witness, that I am led to withdraw much of the objection that I have felt and expressed against the *dictum* of the English law on this subject.

After long-continued and anxious deliberation during a period of one-third of a century, when he had devoted himself specifically to this and almost to nothing else, making this work a monument of his fame. He continues,—

There must be some rule to guard the sacred interests of society; something to repress and keep in check that tendency to shed the blood of his fellow which unfortunately is common; and at the same time, humanity forbids that the horrid spectacle should be permitted of taking away the life of the insane by judicial process.

Drawing a safe medium line between the danger to society on the one hand, from the tendency to bloodshed, and the danger to the accused, on the other, of judicial execution when he is really insane, he still gives his assent to the safe rule of English and American law; and he gives it in these words,—

Let the question put by Lord Lyndhurst, be presented to every jury: *Did the prisoner know that in doing the act he offended against the laws of God and man?*

Let the following remarks of the Scotch law on this subject be kept in mind, and, with the acknowledged mildness of our laws, and the unwillingness to convict capitally, I feel a strong conviction that no practical injustice will be done.

So that the greatest medical writer upon this subject that our country, or perhaps any other, has produced, gives his assent to the great common rule of English and American law; and I call upon you, Gentlemen, as jurors in this case, upon the sacred obligations which you owe to society and to your oath, to enforce that law, if you believe this is a case demanding its enforcement.

Now, it only remains for me, Gentlemen, to call your attention to the evidence of Dr. Parker, and to only one other authority, for the purpose of showing that upon the evidence of Dr. Parker (certainly as intelligent as Dr. Gilman, and giving better reasons for his opinions), this man is as sane as you or I, and is as much a subject of punishment. I will not fatigue you by reading a great deal of his evidence, but will read to you a portion of the cross-examination. My question is,—

Suppose these things to be true of the prisoner; suppose he had forged some of the names of the best firms in New York; that he repeated this systematically, and used the proceeds of the capital for operations in his business,—that when arrested, although perfectly cool, there was a red spot on his forehead, where drops of perspiration stood when he was charged with the forgery; that when arrested at that time he did not admit the forgeries, but charged them to another, alleging that he received the forged paper from a third person,—that it was untrue that he received that forged paper of that other person,—that when confronted with that person, who denied having given it to him, he admitted it was forged, and that he had forged it, and expressed sorrow for what he had done, and said he would make all the restitution in his power,—what would be your opinion as to his appreciation of the right and wrong of forgery, upon these suppositions?

Is not that within our rule of law, and that of the English law? And what does he answer?

A. It would be that he appreciated the thing as being wrong, upon these suppositions.

Find the truth of these facts, then, and you find his knowledge of right and wrong, according to Dr. Parker. The Doctor further added that he believed Huntington knew what the crime of forgery was—that he knew it was a crime, and that he was doing

wrong. So he was under no delusion, no hallucination; he had intellectual sharpness, he had reason enough to resist what he knew to be crime, and he was bound to resist it. The law does not punish a man so much because he commits a crime—it convicts him because he does not resist the temptation to do wrong. The punishment is not so much to reform the criminal, as my friend supposes, when crime is committed. That, indeed, is one legitimate object of punishment; but another and a greater is the protection of society, and a warning to others, so that they may be deterred from following the same bad example; and it is a narrow and partial, not to say unjust view of this case, to consider the criminal only; it is for the interest of society, in the protection of life, property, and character, that the laws against crime, should be enforced; that the laws may operate as a warning, and that the example of punishment may deter others who are placed in situations of temptation from yielding to the first seductions of crime. Excluding one man from society for forgery is a small matter, because of that offense alone. It is the example to be given, to prevent the license which prevails in such a community as this; to prevent this man and others like him from filling their pockets with gold unjustly acquired, escaping upon the plea of insanity, and then going and enjoying their wealth with persons like themselves. That is the object of the law, and that is the reason why it is strict upon this subject. If this man here, according to the history you have had of his actual moral life,—knew that he was doing wrong, and had reason enough to know he ought to resist it, he was bound to do so; and his criminality is that he did not resist it. Why, Gentlemen, if, as representatives of the medical profession, Doctors Gilman and Parker are to succeed by the adoption of their opinions here, in having such an offender as this, and those who resemble him, escape, we had better have a new apotheosis of the medical profession; of course it should be the enshrining of a heathen divinity (for it would not be proper in a Christian land, or in a land which had adopted the Law of the Ten Tables as its rule of moral conduct). It must be a heathen deity who should be enthroned:

> "And the garments in folds that around him are flung
> Should be form'd out of ropes on which felons are hung,
> And the halo of glory that covers his head
> Should be made of the honest man's butter and bread." (Laughter).

It will be a gala day for criminals (if that day ever comes), and they will rejoice in the adoption of the doctrine of these men; because criminals—hardened, long offenders—will be the only safe men in the community.

Now, Gentlemen, I have only a few other words to say to you, and they are chiefly in reference to the authority which I mentioned. It is the case of *Spencer*, in the 1st Zabriskie, p. 207.

Spencer was tried for murder in New Jersey. I think he murdered his wife; it was alleged under the influence of jealousy. He was acquitted on the ground of insanity. He was sent to the lunatic asylum by his friends, and he remained there the elaborate period of three weeks. There was, beyond all question, a hereditary taint of insanity in his family. Two of his uncles were insane. I happened to know both of them, one a clergyman and the other a lawyer. There has been some senile insanity in Huntington's family. Two of them I believe, after they reached seventy years of age, became a little demented. That is not a remarkable thing by any means. And his mother's brother (said to have been an Irish gentleman) used to go round the street, begging assistance, when there was no necessity. I should like to know whether that is a thing which, in this case, can show that Huntington, with all his shrewdness and skill so successfully developed in the acquisition of money by undue means, is crazy. I think not, and I spend no time upon it. I will read what Chief Justice Hornblower says in regard to his notion of moral insanity, in his charge to the jury:—

Having enlarged thus much on this difficult subject, it seems proper that I should add a few observations on the nature and insight of the evidence which is usually adduced to prove insanity. I may begin by saying that the act charged against the criminal is in itself no proof of insanity. The man who commits an offense against God and man is undoubtedly very *unwise*. The sacred volume calls him a fool.

You will remember, fools mock at sin. Throughout the whole sacred volume sin is characterized as folly; and it is folly, as well as crime,—

The sacred volume calls him a fool; and in one sense he is a madman. He madly gives way to the instigations of the evil one, or of his own evil heart. But this is not the kind of madness that is to excuse a man from the punishment due to his crimes. If it were, there would be no such thing as crimes. Every act of crime would only be proof of the insanity of the perpetrator; and the greater the crime, the stronger the proof. When people say that a man must have been insane to have committed such an act, they must be understood as speaking figuratively.

That is the way Dr. Fülgraff spoke. He regarded Huntington as a man he was to look out for.

I cannot yield to the doctrine which has been suggested, founded upon what is called moral insanity. Every man, however learned and intellectual, who, regardless of the laws of God and man, is guilty of murder or other high and disgraceful crimes, is most emphatically morally insane.

He is impassive about the consequences, as Dr. Gilman says. He exhibits utter recklessness in regard to his family, and the consequences of his crimes.

Such a doctrine would inevitably lead to the most pernicious consequences; and it would very soon come to be a question for the jury, whether the enormity of the

act was not in itself sufficient evidence of moral insanity; and then the more horrible the act, the greater would be the evidence of such insanity. On the contrary, in my judgment, the true question to be put to the jury is whether the prisoner was *insane* at the time of committing the act; and in answer to that question, there is little danger of a jury's giving a negative answer, and convicting a prisoner who is proved to be insane on the subject-matter relating to or connected with the criminal act, or proved to be *so far* and so generally deranged as to render it difficult, or almost impossible, to discriminate between his sane or his insane acts. I mean no disrespect to the learned writers on medical jurisprudence, or other distinguished men of the medical profession. On the contrary, I consider the administrators of criminal law greatly indebted to them for the results of their valuable experience and professional discussions on the subject of insanity; and I believe those judges who carefully study the medical writers, and pay the most respectful but discriminating attention to their scientific researches on the subject, will seldom, if ever, submit a case to a jury in such a way as to hazard the conviction of a deranged man.

So there is no danger upon the subject.

Gentlemen, I shall now take leave of this case. You have pursued it with great attention, and with a forbearance for which certainly my thanks are indebted. You have accommodated me too, and so has the Court, under circumstances for which I shall ever be grateful. This has been more than an ordinary trial to me. I would not have remained here, if it had not been from the important consequences which seemed to me involved in this prosecution. It seems to me that the interests of this community in many of its moral aspects are deeply at stake. I know of no criminal prosecution for years, fraught with such consequences, if such a defence as this is to succeed; and, while rendering to you my grateful thanks, and to the Court also, for the kindness and attention you have exhibited towards me, I invoke the Divine blessing upon you, to bring you to such a conclusion that, while no injustice may be done to the prisoner at the bar, crime in general shall not go unrebuked, and this great crime shall not go unpunished.

Mr. Noyes having concluded,

Mr. Brady rose and said: If your Honor please, I have not interrupted my learned friend for the purpose of making any corrections of what we take to be errors in his statement of the testimony; and I shall not now exercise the right which undoubtedly belongs to me, of going through a statement of these various errors, and applying to them the corrections which I think they deserve. I will leave that to the recollection of the Jury. But there are some things which I cannot avoid noticing.

We have no right to object that the counsel should speculate upon the methods in which Huntington disposed of the money that came into his possession; but, if I understand the learned Counsel correctly, he insinuated, if, indeed, he did not directly charge, that in the case of two ladies whose names were mentioned in the testimony of Burbank, there was something in their character which was questionable and improper, of which there is no evidence in this case; and, as I have been assured during this trial, and as I would have made it appear by proof, had any such accusation been made, there is not the slightest pretense for any such imputation; and when

my friend said to the Jury, it was a house in which they kept "lady boarders," I understand there is no proof of that kind in the case. Burbank first spoke of the lady as "Miss"—and afterwards corrected that to "Mrs."—Merserole and her husband, who lived in the house. I want to say that any insinuation of that kind which my learned friend may have been authorized by any one of his numerous clients to make, is, although I presume he is unaware of it, entirely unjust.

In the next place, the learned gentlemen has read a statement in the opening argument of Mr. Bryan, as if it were evidence in the case; and he has assumed in the whole of his remarks which related to that opening, that the entire speech of Mr. Bryan, as made to this Jury, was read at that family consultation. Now, according to the testimony of Mr. Clarke, that was no such thing, as will be seen on a perusal of the testimony of that gentleman. It is as follows:—

Q.—(By Mr. Noyes)—You have said, that after the case was closed for the prosecution here last week, there was a family consultation as to what line of defence should be adopted?

A.—Yes.

Q.—Was any paper read at that family consultation?

A.—I believe there was a paper there. There were statements made from it; it was not read. I understood it was an outline of the opening.

Q.—Was the outline of that opening read to that family consultation?

A.—Portions of it were stated.*

There was no such thing as that Mr. Bryan's illustrations of the sweetness of Huntington's sleep, and the like, were read to that family circle.

If your Honor please, on the subject of simulated insanity, no authority was read before I addressed the Jury. From the same work to which my learned friend referred, *Ray's Medical Jurisprudence*, I read at sec. 243, this:

Those who have been longest acquainted with the manner of the insane, and whose practical acquaintance with the disease furnishes the most satisfactory guaranty of the correctness of their opinions, assure us that insanity is not easily feigned, and consequently that no attempt at imposition can long escape the efforts of one properly qualified to expose it."

Which is the substance of the testimony of Dr. Gilman, upon that point.

Now, Sir, the learned gentleman went into an arithmetical statement to the Jury of the amount of money which he says that Huntington has in his possession at this time. For what purpose, we have all been able to judge. I do not know what line of remark your Honor means to adopt in this case, but if you refer to that branch—

The Court: I shall not say one word upon the facts. I think it out of the order of his duty, for a judge to comment on the evidence in a case.

Mr. Brady: I subscribe entirely to that remark, and I wish there was a law preventing them from doing it. I want to call the attention of the learned gentleman, who, I am sure, desires to be correct, to the fact, that the testimony from Halsey was, that none of the transactions between Huntington and Harbeck, prior to the 1st of July, were entered in any book; they were all treated as cash transactions. And then, there is nothing to show what amount of property those assignees have in their hands; and they have no data upon which any settlement could be made.

Finally, upon this subject of insanity, I read from Barbour's Criminal Law, p. 269,—

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* See page 185, *ante*.

If, after all the evidence given, there remains good ground of doubt whether the prisoner was in such a state of mind as to render him accountable for his crime at the moment he committed the act, it is doubtless the safest way to discharge him. For, as has been justly, as well as feelingly observed, insanity is of itself enough, without inflicting the pain of a conviction and its consequences.

Mr. Noyes. I am happy, may it please your honor, that in a case which has taken so much time, and in respect to which, so far as I am concerned, I have been under a great many distractions, that I have made so few mistakes. I have endeavored to present my view of the evidence precisely as I understood it. I have not intended to misstate or overstate, so far as I know, a single fact. In reference to this matter of the reading of the opening, my attention is called to the answer of Mr. Clarke.

Q.—Was any paper read to that family consultation?

A.—I believe there was. There was a statement read from it. I understood it was an outline of the opening.

It is the authorized statement of the defendant's counsel.

Mr. Brady: The part of Hamlet might be omitted (laughter).

Mr. Noyes: It will not do to make it a matter of levity. The other matters are capable of explanation. I know after the close of counsel's remarks, some corrections should be made; but I leave all this matter to the jury; they will remember which way the facts are.

The court here took a recess.

Note by defendant's counsel:—

The "Cash Book" "and Note Book," referred to by Mr. Noyes in his closing argument, were omitted in the description of the books, at pp. 285–6–7, by mistake. Those were not among the books handed to us by the District Attorney, after the trial, to be used in the preparation of this volume. We were reminded of their existence upon reading the proof-sheets of Mr. Noyes's speech; and we have accordingly looked them up, and append the following description of them:—

The Cash Book is a four-quire book, and purports to contain, in the handwriting of *Thomas*, a "cash account." The entries cover about forty leaves, commencing with Aug. 21, 1856, and continuing up to the 10th of October following. The pages are headed thus—"Dr. 52 Wall street, in account —— with Cash Cr." On the left hand, or Dr. side, are charged the several bank balances, and then follow what purport to be cash items, with initials prefixed to the amounts, thus;—On Sept. 6th (the day the $21,000 check of Huntington was given to Harbeck & Co.), the following entries are to be found:

Balance in Republic, . .	5,471 15	E. F. C.	100 00
Balance in Park Bank, .	266 80	S. B. W.	2,000 00
H.	21,000 00	A. H.	10,000 00
G. & L.*	15,000 00	H.	12,000 00
L. Grege,†	2,000 00	H.	3,000 00
C. & E. W. T.	1,890 50	C. B. & Co.	7,000 00
S. M. I.	4,000 00	C. E. S.‡	1,900 00
Bish.	9,000 00	Collections of Cochran and	
Bis.	4,000 00	Hardin and A. Ward, .	1,750 49
		[Total,] . .	100,378 94

[Cr. side, same date] Paid C. & E. W. Thwing, ... 1,900 00

[and then follows a number of blank lines, with the following figures extended]—700—100—20,000—10,000—2,293 63—13,057 83—15,635 89—29 92—6,700—36 25—6,250—10,000—1,874 50—7,000,

[and then]—Balance in Republic, ... 4,534 12

Balance in Park Bank, ... 266 80

[Total] 100,378 94

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* Margin: "Lake Shore Loan." † Margin: "M. B. Ins." ‡ Margin: "Currency."

The entries of Sept. 6th appear to be fair specimens of all the rest in this book.

The entries on the 9th of October (the day of the first arrest), are as follows:—

On the Dr. side:

Balance in Bank of Republic,	(blank)		C. B. H.	4,800 00
Balance in City Bank, .	(blank)		E. F. C.	300 00
Balance in Artisans' Bank, .	993 61		D. Bis.	200 00
Harb.	9,000 00	[No footing.]		

On Cr. side:—Paid overdraft on Bank of Republic, ... 4,177 13
" " " City Bank, ... 4,182 31

No footing.

On the day following are these entries—on Dr. side, Oct. 10, 1856,

Balance in Bank of Republic, ...	(blank)
Balance in City Bank, ...	(blank)
Balance on Artisans' Bank, ...	(blank)

And on Cr. side:—Oct. 10th, 1856.

This whole book was kept entirely in the handwriting of *Thomas*, and the entries seem to have been made up on the Dr. side from the deposit lists, which were taken by him to the several banks from day to day, and made up on the Cr. side from the amounts entered in the several check-books, or *vice versa*. This "Cash Book" appears to be intended as an amplification of the entries of aggregate amounts contained in the book with 788 pages, described *ante*, p. 286, and it is as difficult to comprehend the utility of the one, as the other.

The "note-book" referred to by Mr. Noyes, is a three-quire book, with heading on double pages as follows: "Dr. 52 Wall Street in — ac. with Note ac., Cr.," and containing entries, from May 19th to June 3d, in Huntington's handwriting, of names and initials of firms and individuals, with amounts opposite, of various sums, ranging from a few hundreds up to several thousands of dollars. The entries on the Dr. side occupy one and a half pages, and on the credit side, three pages. The following are specimens from the Dr. side:

"May 20.	To proceeds T. G. & K. note (8,976 72), . . .	8,711 15
" "	2 H. & G. notes (10,000), ...	9,801 51
" "	2 Gray, S. & Co. (B.), ...	9,497 95

These are the three first entries, and here follow sundry other names, &c.: "C. Well, and C. & J. F. M.;" "Knapp;" "Payne;" "Homer;" "Cameron;" "G. Beng. Well & Chig. accepts;" "B., M. & B.;" "Waldo, B. & Co.;" "Homer;" "Tefts, G. & K.;" "Arnold, C. & Co.;" "Henderson Kumichan;" "T. & S. Lawrence;" "Chs. J. & F. W. Coggill;" "Van Winkle;" "S. Belch & Co.;" "21 notes, $8,875 23;" "2 Babcock & Moore;" "2 Barry notes, 10,972 95;" "1 (ditto), 5,152 09;" "Doremus & N.;" "14 notes, 8,028 34;" "Moyses, and B. & T.;" "R. & R.;" "J. J. S.;" "2 Haggerty & Jones;" "2 Tracy, I. & Co.;" "2 Sack Belch."

The following are specimens from the Cr. side:

"May 20.	Paid for 2 G. Swan & Co. (9,464),	S., ...		8,839 96
	" T. Irwin & Co.,	S., ...		9,349 55
	" W. Barry & Co.,	S., ...		8,431 56
	" Van Winkle,	S., ...		(blank.)
21.	" 2 Barry's	S., ...		10,367 77
	" Fenton, Lee & Co., Babcock, Bonnel, B., H. & Co., and four others,	S., . .		13,055 75

The letter B. in parentheses appears only once on the Dr. side, and six times on the Cr. side, the latter being on the third or last page of the credit side. In three instances, a B. and an S. appear together on the Cr. side, and once the letter H. appears on that side. Nearly every item on the Cr. side has an S. written immediately before the extension figures.

There are no footings-up to the columns, and there are interlineations and erasures, and the word "Error" is written opposite some items, and the handwriting is of an obscure and scribbling character.

On the Cr. side, first page, the entries are under the dates May 19, 20, and 21; and on the second page of the Cr. side, the entries are under the dates *Mar.* 22, 23, 24.

[The reader will please turn back to page 287, and enter a reference to this note.]

THE CHARGE TO THE JURY

OF

HON. ELISHA S. CAPRON, CITY JUDGE.

At a quarter past 2 o'clock P. M., the Jury, after a brief recess, reassembled, and Judge Capron delivered the following charge:

Gentlemen of the Jury:

This trial may be justly denominated a remarkable trial. In several respects, at least, it will, I predict, be hereafter cited as the most extraordinary trial for forgery recorded, down to this time, in the criminal history of our own country, if not of the world. Speaking from the evidence given on both sides, and having no reference to the particular subject-matter of this cause, we may safely assert that the large amount of alleged and admitted forgeries developed by this investigation, estimated not in thousands of dollars, nor in tens of thousands, nor in hundreds of thousands, but in millions, and the vast amount of deposits made in various banks to the credit of the accused, founded on such forgeries, estimated in tens of millions of dollars; the length of time covered by the repetition of these forgeries, extending not to days, nor weeks, nor months only, but to years; the uniform success which attended the schemes of the accused in the absence of all system and order in their prosecution; the astounding facts that his operations, being emphatically nothing less than wholesale jobbing in forgeries, have been all the time well known to business men of Wall street and other parts of this city, and that some of those men not only well knew of the forgery of their own signatures, but actually honored the drafts, and yet made no complaint to the public authorities; and the significantly equivocal relations, which, according to the evidence, subsisted for many months between the accused and several of the witnesses on this trial,—present a combination of characteristics distinguishing it from all others of its class—at least, from all those of which I have ever heard or read.

These considerations, Gentlemen, demand corresponding care and industry on the part of the Court and Jury, in analyzing and comparing the evidence given by the various witnesses in this case. We are to reconcile the testimony consistently with the hypothesis of integrity toward all the witnesses, if that be possible; but if we cannot do that, we are to judge between them; and in forming our judgments on the question of credibility, we are to consider their appearance on the stand before us, their

relations to the matters involved in this trial, and to the accused, and the relative consistency and probability of their statements. We are also to remember that this is the Temple of Justice, and that we are to-day her ministers. The commingling waves of popular excitement, raised from various sources respecting this trial, may disturb the tranquillity without; but calmness and truth alone become the sacredness of this place. We sit here to consider evidence and law. In the discharge of this solemn duty, we are admonished to guard well our heads and our hearts. On the one side, in our devotion to justice, we should avoid the exhibition of inhumanity towards the imperfections of human nature; and on the other side, in our invocation of mercy, we should take care that encouragement be not given by our action, to great crimes and great criminals.

In the discharge of my own remaining duties in this trial, I shall make no comments on the evidence. By the Constitution of our State, a trial by jury is guaranteed to the citizen in criminal cases; and within the spirit of this provision, that decision which is made by twelve men, after listening to a commentary on the evidence from the presiding Judge, can hardly be properly called the verdict of a jury. It is legitimate for the Judge to advise the Jury of the law, and then the Jury should apply the law, as received from the Judge, to the facts as found by themselves, uninfluenced by comments of the Judge on the evidence. You have heard the witnesses testify, and have listened to the arguments of counsel on both sides. Whatever impressions have been thus made on your minds in regard to the effect of the facts on the questions involved, belong to the accused and to the people, unimpaired in their force by any other influence.

The accused, Gentlemen, is indicted for forgery in the third degree. The statute which defines that crime has been read in your hearing; and the Court will not, therefore, detain you by repeating it here. It is sufficient for me to state that the accused has admitted none of the essential elements of the crime of forgery which is alleged against him in this case, and The People must, therefore, establish the existence of all those elements, in connection with the instrument set out in the indictment. They must connect the accused with the making of the paper, the disposition of it after its creation, and the fraudulent intent. If there be entire failure of proof, on either of these points, the defendant will be entitled to an acquittal by your verdict. It is not, however, necessary, that any part of the case should be proved by direct, positive evidence. The essence of the crime being the fraudulent intent with which the alleged act was committed, that intent must necessarily be proved by the acts and declarations of the accused, and surrounding collateral circumstances. For this reason, I have allowed to both parties the widest scope of examination that the rules of evidence permit; and the mass of testimony

elicited on this, and all the other points in the case, affords commendable proof of the diligence and ability with which this privilege or right has been improved by the counsel of both parties.

The Court has already passed upon several legal points raised on the part of the prisoner, during the progress of the trial, and you will, therefore, regard those decision as settled law in this case.

The Court has decided that the allegation of an intention to defraud one person, is sustained by proof of an intention to defraud two persons, the person named in the indictment being one of the two.

It has also been determined that the note in this case would have been a valid instrument, if the signatures of the makers had been genuine, although it is made payable to their order, and is not indorsed by them; that the indorsement forms no essential part of the note for the purpose of this trial, and therefore, the fact of its forgery, which annuls it, is immaterial, and is no valid defence to the charge of forging the name of the maker.

The people are not bound to prove in the first instance, by independent evidence, the intent to defraud; that point is *prima facie* established by proof of the forgery of the signature by the accused; but the presumption of that intent thus raised, may be overthrown by proof adduced for that purpose on the part of the accused; and the Jury may pass on that proof, as upon all the evidence. If, in the opinion of the Jury, a fraudulent intent is satisfactorily disproved, the accused cannot be convicted on this indictment. But, Gentlemen, the forgery of the signature having been proved to your satisfaction, the proof relied on to overthrow the presumption of fraud thus raised should not be slight—it should place that question, in your minds, beyond all reasonable doubt.

I am requested by the counsel of the accused to charge you as the law, that if you believe the paper was received by Harbeck exclusively as collateral security on a loan, known to both Harbeck and the accused to be usurious, the accused should be acquitted. I cannot assent to the proposition submitted. I am unable to perceive that the usurious character of the loan can affect the nature of the alleged criminal act; *non constat* but Phelps, Dodge & Co., or persons who might purchase the paper from Harbeck, it being in form negotiable, might be injured in their property by its circulation; and I think that such a liability to injury would bring the case within the statute.

I am also requested to charge that there is no proof whatever of any intent to defraud Harbeck, or that he was, in fact, defrauded. These, being questions of fact, belong exclusively to the Jury; and therefore I must decline to charge on that point.

It would not have followed *certainly* that the check of the accused for $21,000 would have been paid by the bank, if the

drawer had that amount of money on deposit there; the bank may have had a superior right to the fund, and have refused to pay the check. The words of the statute are; "By which any "person *may* be injured or defrauded." I cannot, therefore, charge that no person could have been injured, although the accused had $21,000 in bank to meet his own draft.

The Court has also decided that in no case is it necessary to prove that injury actually resulted from the forgeries; that an intent to injure or defraud the person named in the indictment, and that the person named, or some other person, might have been injured if the instrument had been genuine, are sufficient to constitute the crime; and that the forgery of the instrument, the subsequent use made of it by the accused, and the forgery and use of other paper about the time when this forgery was, as it is alleged, perpetrated, are proper evidence to be submitted to the Jury on the question of intent, and are sufficient evidence, if satisfactorily proved, of such alleged fraudulent intent in forging the instrument. This intent, Gentlemen, must have existed in the mind of the accused, either at the time when he put the false signature to the paper, or when he parted with its possession, to convict him of any offense connected with that paper.

You must be satisfied also, from the evidence, beyond all reasonable doubt, that the accused either put the name of Phelps, Dodge & Co. to the paper, or that it was written there by some other person at the request or by the direction of the accused, and in his presence. To satisfy your minds on this point, you will refer to the evidence of Mr. Barry, the brother-in-law of the accused, and to that of Officer Bowyer, and other witnesses, who testified to the declarations and admissions of the accused on that subject. That the note is a forgery, is proved beyond controversy by the parties whose names it bears; and the only question on this point for your consideration is: Who did the deed, or caused it to be done? The possession of the *perfected* instrument by the accused, and his negotiation of it, as a security on the loan of money, after it came into his hands in an *unfinished* state, from Barry, may be considered by you in the determination of this question, if you find those facts.

In order to constitute the crime of forgery, it is necessary that the counterfeit should bear some resemblance to the genuine signature. The likeness, however, need not be complete. It is sufficient if the counterfeit be calculated to impose on mankind in general and on strangers, although the individuals whose names are forged, and others acquainted with their genuine signatures and skilled in detecting forgeries, might be able to easily discover the counterfeit. The accused is chargeable with an intent to defraud everybody; and persons acquainted with the name and reputation of the house or copartnership whose name

the paper purports to bear truly, may be deceived, if the resemblance of the spurious to the true signature be but slight. In determining this question of similarity, you may legitimately consider the testimony of the witnesses who speak of the actual and successful negotiation of the instrument by the accused himself. You saw those witnesses and heard their evidence; you can therefore judge of their sagacity as men of business, of their credibility, and the grounds on which they received the paper; and you may consider all those circumstances in determining the question whether the signature is fitted to pass among men of ordinary sagacity for the writing which it represents. If you shall decide that it is thus fitted, it is a counterfeit, a sufficient resemblance to the genuine signature to constitute in law a forgery.

If, Gentlemen, after having duly considered, analyzed, and compared the evidence given respecting the actual forgery of the name of Phelps, Dodge & Co., by the defendant, to the paper set forth in the indictment, and his fraudulent intent, you shall entertain a reasonable doubt of the defendant's guilt, it will be your duty to find him not guilty of that charge.

In reference to the subject of reasonable doubt, I will offer a few suggestions. This term is not generally well understood by jurors, and is therefore often misapplied. The true standard of decision on the evidence is this: If all the facts established to your satisfaction, tending to connect the accused with the actual forgery, may exist, with all the surrounding circumstances, consistently with the hypothesis of his innocence, then there is, of course, a reasonable doubt that he committed the act, and especially so if others are so connected with the transactions included in the charge, that some one of them might be the guilty party. On the other hand, if the accused be so connected and identified with the forgery, that, in your judgment, the facts satisfactorily proved, with all the surrounding circumstances, cannot, upon a reasonable application of them, exist consistently with the hypothesis of his innocence, it will be unreasonable to acquit him; there will, in that event, be no reasonable doubt of his guilt.

If, Gentlemen, you should come to the conclusion that the accused did not himself write the signature of Phelps, Dodge & Co. to the paper under consideration, nor procure any other person to write it in his presence, you will proceed to determine whether it is proved beyond all reasonable doubt, that he had the forged instrument in his possession, knowing it to be a forgery, and uttered it as a genuine paper, with intention to injure or defraud. If you should find the accused guilty of this charge, he would be liable to the same punishment that he would have been, if he had been convicted of the actual forgery. The latter proposition is subject to this qualification, however, that if the evidence will justify you in finding that the accused received

the forged paper innocently, in the course of trade, for a valuable consideration,—then his uttering of it after notice of its forgery, with the intent to defraud, if established beyond all reasonable doubt, would require of you to find him guilty of forgery in the fourth degree. To find him guilty under the two last propositions you must be satisfied, that the accused had *possession* of the forged instrument after the forgery was complete; that he either *knew* it to be a forgery, or was acquainted with facts and circumstances respecting its creation sufficient to put an ordinarily cautious man on inquiry about its genuineness, *while it was in his possession;* and that his possession was connected with *an intention* to injure or defraud some person "*by uttering it or causing it to be uttered as true.*"

The essence of the crime of forgery is the fraudulent intent. "The mere imitation of another's writing, the assumption of a name, or the alteration of an instrument, where no person can be injured, does not come within the definition of the offense." An intention is a fixed direction of the mind towards a particular object. Its character is evidenced by acts and declarations, and the jury must find the fraudulent intent as an inference drawn from those sources. The same may be said of guilty knowledge; it must be inferred from the acts and declarations of the accused relating to the subject about which the guilty knowledge is imputed. Under what circumstances did the accused come into possession of the forged paper? From whom did he receive it? Was it complete when received by him? If not, was it perfect when he parted with it? In what did the change consist? What were his declarations when charged with the forgery? What did he do with the paper? Had he other forged paper? These are inquiries proper to be entertained upon the evidence in determining the motive of the accused, either in making the paper, if you shall be satisfied that he made it, or in having possession of it with knowledge of its forgery, if you shall investigate the case, in reference to giving your verdict on that division of the offense.

With respect to the meaning of the word *utter*, as used in the statute, some difference of opinion exists among lawyers, and has also been manifested in the courts. In England it has been adjudged in one case to signify only an absolute sale, and that, consequently, pledging a counterfeited note, which was to be redeemed at a future day, is not such a passing or uttering as the statute contemplates. But, in a case in our own courts, in which this question arose, the judge says, "The crime of uttering and publishing is not complete, however, until the paper is *transferred*, and comes to the *hands or possession* of some person other than the felon, his agent or servant. Thus, where a note with forged indorsements is sent by the felon by mail from one county to an individual in another county, *for the purpose of*

obtaining credit upon it, the crime is not *consummated*, until the note *is received* by the person to whom it was sent." In that case the note was not sold, but, as in this case, was deposited as security for the loan of money. It may be regarded as a conditional sale—a transaction which may vest an absolute title to the note in the lender. A fraud is as effectually committed in one case as in the other; and there is perceived no well-defined reason, even upon the strict rule of construction applied to criminal statutes, for a distinction in law between the two methods of accomplishing the same fraudulent result.

If you shall come to the conclusion, Gentlemen, after mature consideration of all the evidence bearing specially on the distinct charges of forgery, with apparently guilty knowledge and intent, that the accused is *not guilty*, that finding will close your labors in this case; but, if you shall not be able to reconcile the facts bearing exclusively on these charges with the hypothesis of innocence, and shall feel bound by the obligations of your oaths to find those issues against him, it will then become your duty to consider his other and more abstruse defence of INSANITY.

You doubtless need not be told, Gentlemen, that the law holds no person bereft of reason, responsible for his acts. Deprived of mind, man is but an automatic machine; and human courts, in holding him, when thus afflicted, acquit of guilt, do but humbly and obscurely imitate the perfect justice of Deity. Insanity, or mental alienation, has from time immemorial received the attention of the civil and criminal tribunals of all enlightened governments; able professors in all the learned professions, and other profound scholars, have studied and examined the structure and functions of the human system, the laws and operations of mind, the relations of each to the other, and their mutual influence as a united organism, and have deduced results and demonstrated their correctness by practical illustrations and logical deductions from established data; these results the courts have never failed to sanction as soon as their learned authors had agreed among themselves on the subjects, and practical experience had attested their certainty.

Acting in this spirit, the theories of the schools on the subject of insanity, as approved by the majority of the learned in that department of science, have been from time to time recognized by the courts, and placed among the rules of evidence and law. By many judicial decisions in England and this State, insanity has been considered under the distinct heads of IDIOCY, ADVENTITIOUS, and VOLUNTARY INSANITY. With idiocy and voluntary insanity we have no concern on this trial. Adventitious or accidental insanity has been denominated, in judicial opinions, as *monomania*, or insanity on some particular subject or subjects, the party being sane on all others; and as *total*, or general on all subjects. The courts have also sanctioned the division of in-

sanity into *permanent* and *temporary* insanity, the latter being called *lunacy*. It is not my purpose on this occasion, nor would it be useful, if I had the necessary time at my command, to remark particularly on the characteristics of these distinctions. I have referred to them simply to aid you in understanding more clearly my subsequent remarks on the test of insanity adopted by the courts. Our purpose being practical and not scientific, our search being for legal recognitions and not for theories, I feel bound to charge you in conformity with the decisions of the courts which have authority to declare the law of the particular case. We are in a court of law, not in a school of science; our action, therefore, must be governed by legal adjudications, and not by the conflicting theories and speculations of the professors. These scholastic theories and speculations may be sound, and may indicate a better test of truth in some forms of insanity than the existing rule affords; but, until they shall have been sanctioned and adopted by the only legitimate authority, we must adhere to the established rule of decision.

Insanity is described by the judicial tribunals as the state of being unsound in mind, deranged, diseased or unnatural *in intellect*. By the same authority, insanity is also distinguished as *general* or *partial*, extending to all subjects or confined to one or a few subjects. You will therefore observe that the law, as at present administered, regards insanity, whether general or partial, as a derangement of the mind, the intellect, the reasoning and appreciating principle, the spring of motives and passions. It is a morbid condition of the mind. To constitute a complete defence, insanity, if partial, as *monomania*, must be such in degree as to wholly deprive the accused of the guide of reason in regard to the act with which he is charged, and of the knowledge that he is doing wrong in committing it. If, though somewhat deranged, he is yet able to distinguish right from wrong, in the particular case in which crime is imputed to him, and to know that he is doing wrong, the act is criminal in law, and he is liable to punishment.

But it is insisted for the prisoner that insanity, either general or partial, may exist, and the subject be totally unable to control his actions, while his intellect or knowing and reasoning powers suffer no notable lesion. By this theory, insanity is regarded as a physical disease, an affection of the brain, by which the freedom of the will is impaired or destroyed, and the subject is thus wholly deprived of the ability to govern his acts. It is claimed that persons thus afflicted may be capable of reasoning or supporting an argument on any subject within their sphere of knowledge. In a more practical sense, it is claimed that a person may steal your property, burn your dwelling, or murder you, and know that the deed is a criminal offense, and that he will be punished if tried and convicted,

and may be able to reason on the subject, and yet be guiltless on the ground of insanity! This affliction has received the name of MORAL INSANITY, to distinguish it from intellectual insanity; because the natural feelings, affections, inclinations, temper or moral dispositions only are perverted, while the mind, the seat of volition and motive, remains unimpaired. I will not assert positively that this theory is unsound. It may be reconcilable with moral responsibility for human conduct, but I am not reluctant to confess *my own mental inability to appreciate* harmony between the two propositions, if it exist. This theory may afford a more just and humane standard by which to test the presence of insanity in a particular class of cases, than the existing rule; but until the proper authorities sanction that theory, it cannot be regarded here.

With these views of the law in your minds, you will consider the evidence of the medical witnesses. They are gentlemen of deservedly high positions and profound learning, and their opinions on a question of insanity are entitled to great respect. The evidence which they have given is competent and pertinent on that question, and you will regard it in connection with the other evidence in the case offered on that point in this trial; but it is proper and perhaps necessary that the Court should remind you that the medical witnesses predicate their opinions upon the hypothesis so frankly and fairly stated by them in your hearing, —that a person may be insane to a degree which should exempt him from legal accountability for his criminal acts, and yet that his intellect or mind may remain unimpaired to any considerable extent; that he may know that his act is criminal, but is nevertheless unable to restrain himself from its perpetration. In considering their opinions, therefore, you will regard the principle on which they are formed; and that principle not being recognized in our law, those opinions are not entitled to the same weight in your deliberations that they should have commanded if they had been given with reference to that law.

If, therefore, Gentlemen, you shall be satisfied that the accused committed forgery under either subdivision of the statute; but that when he did the act he was insane, or, in other words, that he was the victim of mental hallucination to such a degree as to deprive him of the guide of reason, in reference to the act with the commission of which he stands charged on this trial; and of the knowledge that the act was wrong, it will be your duty to find him not guilty. In deciding the question of insanity, you will remember the legal presumption that the accused was sane *when* he did the act, and that it devolves on *him* to prove that he was *then* insane. This fact must be clearly established; the accused must do more than to raise a doubt in your minds upon the evidence on this question; he must fully satisfy you that this defence is real and complete.

On the other hand, if you shall be satisfied beyond all reasonable doubt from the proof, that the accused put the signature to the note, or, after it was there, that he had possession of it, knowing of its forgery, and uttered it as true with intent to defraud, and that he knew, when he did either act, that it was wrong; if you believe from the evidence that he had sufficient mind to distinguish between the moral qualities of actions,—it will be your duty to find him guilty.

As I promised to do at the commencement of my remarks, Gentlemen, I have omitted all commentary on the evidence, and have only referred to it for the necessary elucidation of legal propositions. You will now take the case of the accused to the jurors' room, for final determination; and I trust that you will enter on the discharge of this closing duty under a proper sense of its solemn import to the accused, and of the no less grave public considerations which are involved in the result of your deliberations. You should, if possible, find a verdict. If the accused be guiltless, every impulse of humanity, as well as every dictate of justice, demands that he be promptly restored to his family and to society. If he be guilty, the interests of the whole commercial world require that he be certainly and speedily punished. Let neither party have just cause of complaint.

The jury then retired—it being 3 o'clock.

After the jury retired, the Counsel for the defendant excepted to the following portions of the Judge's charge:

First.—To the instruction that the allegation of an intent to defraud one person, named in the Indictment, was sustained by proof of an intention to defraud two persons, the person named in the Indictment being one of the two.

Second.—To the instruction that the note was valid, as set out in the Indictment, though not alleged to have been endorsed; the endorsement forming no part of the note.

Third.—To the instruction that if the forged paper were passed in consummating a usurious transaction, the defendant might yet be legally convicted on the Indictment.

Fourth.—To the refusal to charge that there was no proof of an intent to defraud Harbeck.

Fifth.—To the instruction that the crime of forgery would be committed, if some person other than the person named in the Indictment, might have been injured by the paper if genuine.

Sixth.—To the instruction that delivering the note to Harbeck, as collateral security, was an *uttering* within the statute against forgery.

Seventh.—To the instruction that "To constitute a complete defence, insanity, if partial, as *monomania*, must be such in degree as to *wholly* deprive the accused of the guide of reason, in regard to the act with which he is charged, and of the knowledge that he is doing wrong in committing it."

Eighth.—To the instruction that, "If, though somewhat deranged, he is yet able to distinguish right from wrong, in the particular case in which crime is imputed to him, and to know that he is doing wrong, the act is criminal, and he is liable to punishment."

Ninth.—To the instruction, that *moral insanity*, as defined by medical writers, and the medical witnesses, would not excuse from the consequences of crime committed under its influence.

Tenth.—To the instruction, that the jury were to regard the *principle* on which the medical witnesses formed their opinions, as not recognized in our law.

Eleventh.—To the instruction, that if the accused had sufficient mind to distinguish between the moral qualities of actions, it was the duty of the Jury to convict him.

The defendant's Counsel also excepted separately and specifically, to each and every refusal of the court to charge, as to the respective propositions submitted by them, and to each and every instruction which he gave to the Jury, to the contrary of such requests, or either of them.

At half-past seven o'clock, P. M., the Jury returned into court and took their seats.

The District Attorney addressing the Court said,—"Had we not better wait for a few moments until the Counsel for the accused shall arrive?"

The Court: "Certainly."

At a quarter to eight, Mr. Brady and Mr. Bryan, with several of the prisoner's friends, entered the court; and, amid the most deathlike silence. the Clerk having called the names of the Jurors, propounded to them the usual questions:

Gentlemen of the Jury, have you agreed upon your verdict?

The Foreman: We have.

The Clerk: How say you, do you find the prisoner, Charles B. Huntington, guilty, or not guilty?

The Foreman (in a low and scarcely audible voice): *Guilty!!*

No sign of approbation was evinced when the verdict was pronounced. It seemed to us (the shorthand writers), that the countenances of the audience exhibited rather sorrow than satisfaction at this unexpected result.

Several minutes elapsed without a word being uttered, until at length the solemn silence was broken by—

The District Attorney, who rose and said: If your Honor please, I gave to my learned friend the junior Counsel in this case (Mr. Bryan), notice this afternoon, that, in the possible event of this Jury convicting his client,—and in view of your term expiring, and in view of other considerations, I should move for immediate judgment upon the prisoner. I, therefore, in accordance with my duty, move that the judgment of the Court be passed upon the prisoner at the bar.

Mr. Brady: I have a word to say. If your Honor please, scarcely any thing can happen in any case in which I am concerned as Counsel, which can create any surprise on my part; and I am not aware that there is any thing which I ought to say, or can say with any propriety, in reference to the motion which the learned District Attorney has made. There are some questions of law presented in this case, which can be disposed of as well at any future time as now; and you, Sir, will be pleased to dispose of this motion in any way that may seem proper to the Court.

The Court: I suppose the proper course of proceeding upon such a motion as this, is to, at once, pronounce the judgment of the Court, unless there are some good and sufficient reasons which would lead the Court to believe that justice could be better subserved by suspending judgment for a reasonable time, to take such proceedings for review on the part of the prisoner as Counsel deemed advisable. But I know very well, and so do the Counsel, that the passing of sentence will make no difference as to the prisoner's right of review in the Court of Appeals, to correct any erroneous decision which this Court may have made. Inasmuch as there is no objection made on the part of the prisoner's Counsel, as I understand, it would be as well, in view of the fact that my term of office is shortly to expire, to dispose of this case at this time, and leave the Counsel for the accused to take such proceedings as they may hereafter deem expedient.

The Clerk put the usual question to the prisoner, if he had any thing to say why sentence should not be pronounced against him, according to law.

Mr. Huntington: I have nothing to say.

Mr. Brady: If your Honor please, Huntington has nothing to say, for reasons that will be obvious enough at some future time, and to the satisfaction of all persons who have doubted up to this moment; but I have something to say. So far as the result of the deliberations of this Jury is concerned, I am satisfied; and I say it without affectation. I told this Jury that I would be satisfied with any conclusion at which they might arrive. I am. I know that they are conscientious men, and when I meet them in the community, and when I see them at any time hereafter, they can take it for granted that I have the most unlimited and the most unqualified respect for the conclusion at which they have arrived. They were disinterested jurors. I was a zealous counsel. All that I have to observe is this, that if your Honor pronounces judgment upon Huntington, we would desire some little time to make an arrangement in reference to the disposition of his affairs, which the Court, as well as the counsel on the other side will perceive is needed. Your Honor will remember that he made

an assignment to Halsey upon the 10th of October, for the benefit of Belden and the Harbecks; and also one to Bishop on the 18th, for the benefit of all his creditors; and there is a controversy going on in the courts about it. It is therefore necessary that we should see him as to the affairs in litigation. We could not see him at Sing Sing with any kind of advantage; and although your Honor may pass sentence, I hope that som order will be made to allow him to remain in this city until some suitable arrangement may be made in regard to his affairs.

The District Attorney: I am not sure that the Court has any power to make any order of that kind; but I will say that, so far as I am concerned, I will offer no obstacle to the sheriff, into whose custody the prisoner, or convict, will go, detaining him for a short time in the county, so that my learned friend's views may be met.

The Court: I looked into that question in reference to the case of *Wills and Conolly*, and satisfied myself that the Court had no power to grant a conditional judgment, pass a conditional sentence, or defer the time of execution, for the purpose mentioned. Certainly, I should feel disinclined to take a responsibility for which I could find no warrant in the law. With a strong desire, personally, to render every aid to ameliorate the condition of this man, and to benefit him or his family, in reference to the arrangement of his estate, I shall be obliged, in justice to myself and to the public, to deny the motion. But I say to the prisoner, that I have no doubt the sheriff, in the discharge of his duty, will render any accommodation that he feels he has the power to afford. In reference to the main subject, I shall be obliged, to take the same view of this case that I did of that of *Wills and Conolly*. In that case, I refused an appeal to suspend judgment, and also to abridge the time of punishment allowed by the law. My feelings would lead me to abridge the term of confinement in this case, if I were at liberty to consult them; but there are other considerations which are superior to any indulgence of sympathy. When persons of no standing, social or moral, professional or business, are arraigned for crime, and tried, often without counsel, and with no one to say a word in their favor, the full amount of punishment is inflicted upon them that is allowed by the law. This is the every-day practice; while the crimes which they commit are as almost nothing in moral effect, compared with those committed by persons holding a high station in society; for the latter are surrounded by restraining influences that are potent—the influence of pleasant families, and strong and numerous social friendships. When such individuals break over these influences, and violate the law, it certainly is evident that they have more moral depravity than those who have broken the same law unsurrounded by any of these restraining influences, because we know from experience that these influences restrain us, and prevent us from doing many acts which we might be led to do, if they did not surround us. Therefore, when a man thus circumstanced disregards them and commits crime, he gives evidence that he is unfit to be a member of society in any relation. The public have a demand upon the Court, in such cases, superior to any that it can have in the other class of cases to which I have alluded. Under these circumstances, and in view of these considerations, I shall not feel justified, as a judge, sitting here, to impose any other punishment upon this man than the longest term of imprisonment prescribed by the statute—five years.

The Clerk suggested that it should be for four years and ten months, to comply with the statute, which provides that the prisoner should not be discharged in the winter season.

Mr. Brady: Great effect that will have on Huntington!

The Court: The object of the statute is humane, that convicts should not be discharged at that season.

Mr. Brady: Oh, certainly, I do not make the remark in disparagement of the law, by any means. I would say for Mr. Huntington, and certainly for myself, that we are very much obliged to the gentlemen of the Jury, for the great patience and attention with which they have listened to this case; and we have no fault to find with their judgment—at least I have not.

The Court: The sentence is that the prisoner be confined in the State-prison at Sing Sing for four years and ten months.

Mr. Brady: And if the law approves it, he will suffer.

The court then adjourned; and the prisoner, having taken leave of his friends, retired with the sheriff.

NOTE:—Immediately on the rendition of the verdict, the counsel of Huntington commenced the preparation of a Bill of Exceptions, and they expected he would be suffered to remain in the City-prison until they could complete it, and obtain a stay of proceedings. The sentence being pronounced, the District Attorney and City Judge thought they had no further power in the matter, and the whole responsibility of detaining him here for a few days devolved on the Sheriff, who felt reluctantly obliged to hasten the departure of the prisoner to Sing Sing; and he was sent there on Friday, the 2d of January.

From the Sunday Courier of January 4th, 1857.

On the afternoon of Friday, Huntington, the forger, took his departure for Sing Sing, in custody of Deputy Sheriff Ingles. At half-past one o'clock he was informed in his cell that the officer was waiting. He heard the announcement with an air of indifference, and continued smoking his segar. In a few minutes he came down and stepped into the warden's room, where he had a conversation with three or four of his friends. As he passed the grated door leading into the outer passage, he shook hands with three or four of the keepers, with whom he had become acquainted; and having bid them a "good-by, boys," as his farewell, he went into the street. Huntington seemingly felt but little concern in the matter. Several of his friends, however, evinced a profound appreciation of the solemnity of the proceedings. * *

Extract from an Elaborate Description of Sing Sing Prison in the N. Y. Daily Tribune of Jan. 6, 1857.

"This person (Charles B. Huntington), who has so lately occupied the public attention in a criminal way, reached the prison on Friday evening last. The Warden at first designed to place him in the hat-shop to work; but Huntington, being a cabinet-maker by trade [somewhat familiar with the business of cabinet-making], was placed in the cabinet-shop. He preferred it to the hat-shop. On Monday he was busy nailing together bedstead slats, and packing finished bedsteads for removal. He maintains his fortitude, and works cheerfully. The overseer of the shop in which he works, desiring to inure him gradually to hardship, which is the practice with new arrivals, for the sake of health, told him that he might work with his coat on for a few days of this cold weather; but Huntington took off his coat and worked as actively and cheerfully as though he had all along been working at the bench, instead of engaging in feats of financial ground and lofty tumbling in Wall street. It was

Huntington's luck, at his first prison meal on Saturday, to march into the hall next to, and be seated at the side of, a large-sized specimen of the African race. This was new to him, and of course not very agreeable. This sudden trransition from luxury to prison fare, from spacious, richly furnished and beautiful apartments to a narrow, gloomy, meanly-furnished cell, cold and dark, is a change which must produce most painful sensations in his mind. He has expressed his desire to the keeper to be made acquainted with the rules of the prison, so that he may strictly observe them; and he will make the best of it.

Extract from an Elaborate Description of Sing Sing Prison in the N. Y. Daily Herald of Jan. 12, 1857.

From the moment of his arrival at Sing Sing, Huntington showed every disposition to comply with the prison regulations. He requested to be informed of the rules, in order that he might not unknowingly break them. He seems to have resigned himself to his fate, calmly awaiting the day of his release.

* * * * * * *

We found the forger hard at work in the upper cabinet-making shop. He was at the end of the room, raising a considerable disturbance with a hammer. We were given to understand that he was engaged on common bedsteads. The loss of his moustache and whiskers, and the close cut crop of hair, gave him the appearance of a man of twenty-six years of age; and his countenance did not at all betray marks of sorrow or contrition. If anything, he looked far more comfortable than during his trial; and it is well known that he was, apparently, the most unmoved man in court. * * *

We learn from a gentleman who lately visited him in Sing Sing, that Huntington makes no complaint of the food, the work, or the regulations of the prison. He is as full of hope now as before the verdict. He calmly intimated, however, that his friends must *hasten* his deliverance, or their efforts would prove barren of good to him; for, said he, "I shall die here for want of sleep;" and he then briefly alluded to the cold forbidding walls of his narrow and cheerless cell, and to the hard uncomfortable couch within it—in tones so painfully and so graphically descriptive of his wretched condition, that our informant was only relieved from the choking of the suppressed grief within him, by giving way to the tears which came welling up from the heart, as he stood there and beheld and contemplated the unfortunate being who had so little to ask for, in order to render his situation endurable, and that little denied him! It is thought by many that it should be so, as part of the general system of discipline which must be observed in such institutions. We have no opinion to express on that subject at present; and have only to add the inquiry to the Reader: Whether, in view of the importance of the legal questions involved in the case, and the acknowledged propriety of a Bill of Exceptions,—it would not have been more *humane* to have suspended judgment (which is not an unusual thing) until the Bill could have been prepared, and a stay of proceedings *applied* for! One week's delay would have been sufficient; but the clamors of the journals are loud and harsh;—they triumph o'er their victim, and glory in his sufferings!

A

MEDICO-LEGAL EXAMINATION

OF THE

Case of Charles B. Huntington,

WITH

REMARKS ON MORAL INSANITY AND ON THE LEGAL TEST OF SANITY.

NIHIL A CRIMINE, NULLA FICTA A MORBO TOTA.—*Esquirol.*

BY CHANDLER R. GILMAN, M.D.,

Professor of Medical Jurisprudence in the College of Physicians and Surgeons and one of the medical witnesses in the case.

It has been suggested to me, that advantage might be taken of the interest excited by the case of Huntington the forger, to disseminate those doctrines on the subject of insanity which, although quite familiar to those who have paid special attention to the study of the disease, still make their way with great difficulty in the legal profession, and are to the general public almost unknown. In assuming this task, it is proper to state distinctly, that I make no pretension to originality. I cannot hope to extend the scientific knowledge of the subject. The expert in legal medicine will find nothing in these pages with which his previous studies have not made him perfectly familiar. My object is not to instruct him, but to disseminate among the people those facts and doctrines which have long formed a part of his knowledge;—facts and doctrines which the labors of Pinel and Esquirol in France, Prichard and Winslow in England, and Woodward and Ray in our own country, have established—as we, their disciples believe—beyond the possibility of successful cavil.

It is not at all my desire or design to defend the medical opinions given in the case. If they were honestly and intelligently given, they need no defense; if not, none will avail.

I shall give a sketch of the case in its medico-legal aspect, but only as introductory to the remarks on the existence of moral insanity, and the legal test of sanity, to which I desire specially to attract the attention of my reader.

Chas. B. Huntington was born in Geneva, New York, in 1821, of respectable, though not wealthy, parents. His ancestors, both direct and collateral, had generally enjoyed good health, and several of them attained to very advanced age. A paternal aunt became insane at the age of seventy, and remained so till her death; a paternal uncle is at present insane, and he became so in old age. A maternal uncle was obliged, at twenty-two, to abandon his business, on account of mental aberration, which manifested itself by begging in the streets in the most piteous manner, though he was not in want, and often distributed with careless profusion what he had gained by begging. No other form of mental unsoundness in this man was in evidence. In infancy, Huntington was attacked with scrofulous disease of the scalp and neck, which continued very troublesome till his tenth year. To this disease his father attributed a waywardness of temper, a recklessness of consequences, and a want of truthfulness, by which the boy was distinguished from his earliest years, and which parental discipline never could eradicate. At school the same faults were noted, with a disposition to pilfer, for which he was often punished—till the master became convinced that it did no good. At sixteen he was taken from school, and placed in charge of a sales-room, to assist his father (a dealer in cabinet furniture). In 1848, he came to New York, and opened a furniture store. In a few months he failed; and so utterly unsuccessful had he been, that the assets paid but about ten per cent. From this time he continued in New York, except that in the winter of 1853–4 he spent a few months in California. During the whole period of his residence in New York he was engaged in wild schemes and speculations, and undoubtedly committed more than one forgery. His speculations all resulted in losses to those whom he persuaded to engage in them; and for the part he took in one of them he was indicted, but the indictment was not prosecuted. After the explosion of each scheme he would sink into utter poverty, often unable to do anything for his support, and dependent on the charity of friends. He was overwhelmed with debt, and his affairs in complete confusion. Then some other scheme would be started; and, till the new bubble burst, he would have command of money, and use it extravagantly. In these alternations of wealth and poverty, extravagance and want, the time between his failure as a furniture dealer, and his establishing himself as a note broker in 1855, passed. Then (in 1855) began the series of forgeries which were continued for nearly a year, and the first effect of which was to give Huntington an almost unlimited command of money. This he squandered in

the wildest extravagance—filling his house with costly furniture, plate, &c.; buying horses, carriages, or any thing else that caught his eye, without the slightest regard to cost, or to any notion of his own wants. These (the horses and carriages especially) were sometimes kept but for a few days, and then sacrificed for any thing they would bring. In other respects he was just as unreasonable. Though a kind, attentive husband, he on one occasion brought a brass band into his house, which he had ordered illuminated from garret to cellar for the occasion, and kept the musicians playing in the hall, while his wife was confined to bed with some nervous affection. This was done, as he said, to cheer her up—to raise her spirits.

In this career of extravagance and folly he continued till October 9th, when the character of the paper which he had for months been placing as collateral security was discovered, and he was arrested. He was bailed, and allowed to remain at large for a day and night; when, further discoveries being made, he was surrendered by his bail, and committed to prison. In prison, he was visited by Dr. Willard Parker, who gave upon the trial the following account, in substance, of those interviews:—

Dr. Parker visited Huntington at the Tombs, as he testifies, in order to form an opinion as to the soundness of his mind. He states he had two interviews with him, which occupied an hour; that he was not introduced to him as a physician; that he found him quiet, and without any apparent appreciation of his situation. Physically, he was delicate; perhaps feeble. He seemed to be a man who was mild and inoffensive in character, and without much intellect. The doctor conversed with him freely concerning his crimes, and the infamy they would bring on his family and friends. He appealed to him concerning his children, with a view to create some emotion, but he was entirely unimpressible. No emotion could be excited. Huntington stated that he should commit the same crimes again, because "he could not help it." If the desire came upon him, he must and should yield to it.

He then examined into the state of his health, and learned he had suffered much from constipation and hemorrhoids for many years; that a year or two before, he had had the Panama fever; that for years he had had noises in his head, as if from machinery; that he suffered much from sparks before his eyes; that for several years he could not sleep well—rarely more than three or four hours in twenty-four. When asked if he had troublesome dreams, or if his business disturbed him, he replied "not at all."

Huntington stated he had forged twice before; that it was discovered, and he was let off because it was believed he intended to do no harm. When he went to San Francisco, he left spurious paper, which "*he had made*," unprotected.

He said he had never gambled; that he had not been dissolute with women, although such had been his reputation. He did not care for money, and had made no provision for the future.

He was also seen by the writer of this tract on two occasions. At the first, one of the counsel of Huntington was present; at the second, the prisoner was seen alone. During these interviews, the conversation turned on his forgeries and on their consequences to those he had defrauded, to his family and to himself. Upon all these subjects he spoke with the utmost freedom, confessed that he had forged repeatedly, and to enormous amounts, that many had lost or would lose by him, that some of these persons had been involved solely by their desire to assist and befriend him, &c., &c. All this was told with a calm, smiling manner, the details being from time to time interrupted by trifling compliments, inquiries about the news, comments on the weather, and other idle talk.

When his attention was strongly directed to the dangers of his situation, his probable conviction, the prospect that in a few months, perhaps weeks, he would be in the State-Prison, his replies were in substance, "Oh, no! it is impossible! no twelve men can be found who will convict me." But why? "Oh, I never intended to injure anybody." But you have injured many persons. "True, but I did not intend to do any thing wrong." Nay you know that forgery is a crime. "Oh, yes, but I never intended to injure any one." To disturb, if possible, this impassive state, allusion was made to the distress of his wife and the heritage of shame he would transmit to his children. His replies were in the same smiling, good-natured, yet indifferent tone. He was sorry, but it would all come right—all blow over.

While talking on these subjects, the least trifle would divert, and, for the time, engross his attention; from the grief of his wife, the shame of his children, and his own utter ruin, he would turn without the slightest effort, to the spots on his dress, the quality of his segars, or any other trifling matter.

Such was the condition of Huntington, and such in part his previous history. On these facts the medical witnesses were required to give their opinions as to his sanity. They both stated that he was insane, or, in other words, that the disease of the brain had impaired both his intellectual and moral nature, Dr. Gilman expressly stating that he had that combination of intellectual with moral insanity which so frequently exists.

This opinion was based on the following considerations:—I give, in his own words, the views of Dr. Parker, and follow them with my own.

Dr. Parker states his belief that Huntington was of unsound mind or morally insane, and bases his opinion,—

First, on the hereditary taint.

Secondly, on the history of his actions from his school-days to manhood, and from manhood on to 1855.

Thirdly, on his want of sagacity and self-protection in his financial operations—his utter inconsistency in all his actions, his destructiveness and recklessness in his transactions, his supreme folly in the management of his own household; as, for instance, his wife being unwell, he lighted his house and filled it with bands of music at intervals for weeks, it being his object, he said, to soothe Mrs. H's. nerves, that she might be able to go to Rockaway.

The Doctor stated further that there was nothing in his appearance or deportment that indicated the malevolent villain or the knave. He seemed a man of very moderate intellect, and as if he would serve for the tool in vice, rather than for the projector of schemes and plans.

The facts in proof in the case, clearly establish, in my (Dr. G's.) opinion,—

First, extreme carelessness, profusion and wastefulness in the spending of money: he bought horses, carriages, plate, &c. &c., without the slightest reference to cost, and entirely beyond any reasonable view of his wants.

Secondly, utter improvidence, both as to the preservation of his property and as to his personal safety: he took, so far as appears, no measures to secure or lay by any thing of his ill-gotten gains, as a provision for the future.

He took not the slightest precaution to insure his personal safety in the event of his detection; he did not attempt to conceal or destroy any of the proofs of his crime, though a very important part of such proofs (his letters to young Barry directing him to draw notes, which he, Huntington, might afterwards, and in fact did, convert into forgeries), were for a long time previous to, and for a day after his arrest, in his own office, and entirely under his control. When first arrested, and suffered to go at large on bail, he made no attempt to escape when such attempt was nearly certain to succeed.

Thirdly, recklessness of detection, manifested in the mode of committing his forgeries. There was little or no attempt to imitate signatures in any case, names were mis-spelled, the names in a firm transposed, notes were allowed to remain in the hands of Belden and others, till past due; and, what is perhaps strangest of all, he not only employed young Barry to draw the notes, but sent him written orders to do so, although he could have drawn the notes himself, or, if indeed he chose to trust Barry, could, by walking a few steps from his own office, have given the order verbally, and thus kept from the hands of Barry, and eventually from those of the police, most important proofs of his criminality—proofs that were sure to be used, and eventually were used against him. For this reckless folly the only reason that appeared was, that Barry complained of having nothing to do, and Huntington replied, "I will give you something to do." Such

were some of the manifestations of carelessness, imprudence, and recklessness in this case. Do they prove unsoundness of mind?

This is manifestly a question of degree; for all will admit that, existing in a certain degree, carelessness, imprudence, and recklessness are inconsistent with mental soundness. Did they exist in that degree in Charles B. Huntington? Had any other man in this community manifested the same reckless extravagance in the spending of money, no one can doubt that his friends would have sued out a writ *de lunatico inquirendo*, to take from him the control of the property he was so foolishly squandering. And do not the records of the Court of Chancery abundantly prove that the writ would have been allowed, and measures would have been taken to protect his family from the ruin his imprudence was bringing upon them? But, without dwelling too much on that point, let us look at the whole case of Huntington in the light thrown on the subject by Prichard, who has written so ably on Moral Insanity. He says, "An attentive observer will often recognize something remarkable in their (the patients'), manners or habits, which may lead him to entertain doubts as to their entire sanity; and circumstances are sometimes discovered, on inquiry, which add strength to this suspicion. In many instances it has been found that a hereditary tendency to madness has existed in the family, or that several relatives have labored under other diseases of the brain.—*In some cases the alteration in temper and habits has been gradual and imperceptible*, and seems only to have consisted in an *exaltation or increase of peculiarities* which were always natural and habitual. In this state many persons have continued for years, to be sources of apprehension and solicitude to their friends and relatives, who cannot bring themselves to admit the real nature of the case. The individual follows the bent of his own inclinations, is continually engaged in new pursuits," &c., &c. Further on, Prichard speaks of cases "marked by thoughtless and absurd extravagance, wild projects and speculations, in the pursuit of which the individual has always a plausible reason to offer for his conduct. Let us try, I say, the sanity of Huntington upon the principles here laid down.

First, Prichard speaks of "attentive observers recognizing something remarkable in their habits or manners, which leads them to doubt of their sanity." Precisely such observations were made on Huntington by his school-mates and the friends of his after life. "He was always a strange boy," says one of the former. "I thought he must be crazy," said in substance an acquaintance of after life. "In many instances," continues Prichard, "an hereditary tendency to madness has existed in the family." Huntington had two uncles and an aunt insane. The remarks as to the "gradual and imperceptible alteration, and the exaltation of peculiarities which were always natural and habitual," are of such obvious application, that they need not be dwelt on.

Again,—"Thoughtless and absurd extravagance, wild projects and speculations," are mentioned as characterizing the insane. Did any man ever carry these wild projects and speculations further than did Huntington? Such were some of the reasons on which was predicated the opinion that Huntington was insane. Some other points which had their influence are so freely set forth by Dr. Parker, that I need not dwell on them here. These views were in substance given in evidence, and eloquently pressed on the attention of the jury by Mr. Brady, of counsel for the prisoner.

The prosecution insisted that Huntington could not be insane, as he knew right from wrong. "The idea of moral insanity," said Mr. Noyes, "where the intellect was unimpaired, the disease consisting of a depravation of the moral propensities, is false and dangerous; it is not the theory of the law; and God grant that it never may be!"—"If a man knows that he is doing wrong, he is bound to refrain, and if he does not, he is a fit subject for punishment, both from the law of God and the law of man." Such was the law, as laid down by the prosecution.

In his charge to the jury, Judge Capron said, "The law, as at present administered, regards insanity, whether general or partial, as a derangement of the mind, the intellect, the reasoning and appreciating principle, the spring of motives and passions. To constitute a complete defence, insanity, if partial, must be such in degree as wholly to deprive the accused of the guide of reason in regard to the act with which he is charged, and of the knowledge that he is doing wrong in committing it. If, though somewhat deranged, he is yet able to distinguish right from wrong in the particular case in which crime is imputed to him, and to know that he is doing wrong, the act is criminal in law, and he is liable to punishment. But it is insisted for the prisoner that insanity, either general or partial, may exist, and the subject be totally unable to control his actions, while his intellect, or knowing and reasoning powers suffer no notable lesion; it is claimed that persons thus afflicted may be capable of reasoning or supporting an argument on any subject within their sphere of knowledge.

* * * * * * * * *

This affliction has received the name of Moral Insanity, because the natural feelings, affections, inclinations, temper, or moral dispositions, only are perverted, while the mind, the seat of volition and motive, remains unimpaired. I will not positively assert that this theory is not sound: it may be reconcilable with moral responsibility for human conduct; but I am not reluctant to confess my own mental inability to appreciate the harmony between the two propositions, if it exist."

Under this charge the prisoner was found guilty, and sentenced to the State-prison.

It will be perceived that the law, as stated by Judge Capron, ignores the existence of moral insanity. He states distinctly that "to constitute a com-

plete defence, insanity, if partial, must exist in such a degree as wholly to deprive the accused of the guide of reason in regard to the act with which he is charged, and of the knowledge that he is doing wrong in committing it." On the law, as thus, no doubt correctly, stated it, I shall now proceed to make a few remarks, and first of *Moral Insanity*. This is spoken of as "*a theory*," a thing the existence of which may be denied. Much is said of the mischievous nature of such a theory,—of its impeding the execution of the law, being irreconcilable with the doctrine of human responsibility; of all this, hereafter. First, let us ask, does moral insanity actually exist as a substantive disease, or is it a mere theory invented by doctors to explain certain facts?

That we may discuss this question understandingly, let us first state distinctly what is meant by Moral Insanity?—*What is moral insanity?* I condense the definition of Prichard, "A perversion of the feelings, temper, and moral dispositions or impulses, without any perceptible aberration of the intellect, or any insane hallucinations or delusions." I shall attempt to establish the existence of this form of mental disease, by showing that in some cases it has resulted from injury; in others it has obviously depended on physical disease; finally, that it has been cured by remedial measures addressed to physical disease.

Having given proof of these facts I shall claim that the existence of moral insanity as a form of disease is placed beyond all reasonable doubt.

Moral insanity resulting from injury done to the brain.

Acrel mentions a case where a young man, after receiving a severe wound on the temple, for which he was trephined, manifested an invincible propensity to steal; which was quite contrary to his former disposition. After commiting several larcenies, he was imprisoned, and would have been punished, had not Acrel satisfied the judge that he was insane.*

Cases where moral insanity has obviously depended on physical disease.

Case I. A peasant of Krumbach in Swabia, was from his eighth to his twenty-fifth year, subject to epilepsy. Then, without any apparent reason *his disease* (in the significant words of Esquirol, from whom I quote the case), *changed its character*, and, instead of epileptic fits, this man was attacked with an irresistible impulse to commit homicide. He felt the approach of the attack some hours, or perhaps a whole day before its advent being very sleepy, though unable to sleep, was very much prostrated; and experienced slight convulsive movements of the extremities. The first moment he is sensible of the approach of his evil hour, he begs to be tied—to

* Gall sur Les Fonctions, vol. 4, p. 220.

be loaded with chains—lest he should commit some frightful crime. "*When it seizes me*," said he, "*I feel that I must kill, must strangle some one, if only a child.*" His mother, to whom he is fondly attached, would have been his first victim. "*Mother*," he would shout in a frightful voice, "*Mother, save yourself or I shall strangle you.*" During the attack he has his senses perfectly. Knows that in killing any one he would be guilty of an atrocious crime. The attack lasts one or two days. When it is over, he immediately cries out, "Unbind me,—Alas, I have suffered terribly, but still I am happy that I have killed no one."*

CASE II. A patient of Mr. Daniel, laboring under disordered liver, without any sign of intellectual aberration, was found by Mr. D. in a state of great excitement. He confessed that while talking with his wife and family, his eye caught the sight of a poker, and he felt a desire to shed blood, which he feared he could not control. He shut his eyes and tried to think of something else, but in vain; when he could bear it no longer, he ordered them with a voice of thunder to leave the room. Had they opposed him, he felt that he should have murdered them all.†

CASE III. A nurse in the family of Baron Humboldt met her mistress returning home, and, in the greatest apparent excitement of mind, and falling upon her knees, besought permission to leave her service, and to be sent out of the house. On asking the reason of this most extraordinary request, Mad. H. was informed that whenever this wretched being undressed the infant of which she had charge, she was, on observing the whiteness of the skin, struck with an instinctive desire to cut it open; fearing she might not be always able to resist this terrible propensity, she desired to be discharged. This girl had always given entire satisfaction to her employers, and her sanity had never been called in question. She had amenorrhœa.

CASE IV. A servant girl aged 17, had never manifested any mental disorder; but from her fourth year, she had been subject to spasms, which finally degenerated into epileptic fits which were unusually violent, whenever they coincided with the menstrual period. She was guilty of two incendiary acts; a very severe fit occurring previous to the second. The faculty of Leipsic, who were consulted respecting the case, reported that, in consideration of the physical state of the accused, they did not consider it probable that at the period when she committed the incendiary act, she enjoyed the free use of her mental faculties.‡

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* Esquirol, in Hoffbauer, p. 347.

† Prov. Med. Jour. Nov. '42.

‡ Plattner, cited in Ray, p. 199.

CASE V.—Marie C., born of honest parents, from whom she received a good education, embraced the life of a teacher, which she followed for some time; when, finding it too laborious, she became a domestic servant in a family, with whom she lived eight years.

After innumerable acts of malignity and cruelty, she was at length committed to an asylum. There, in reply to interrogatories, she gives the following account of herself: "I never amused myself like other children. I had a fantastical and capricious temper, generally preferred seeing evil done rather than good. I took pleasure in nothing. *I have never been regular.* The physicians bled and leeched me for this, but it did no good. Six months ago I had severe illness (typhoid fever); since then I sleep little—the blood rushes to my head, and the desire of doing evil takes possession of me. I arise at night and go to torment my sister. Once I bit her very badly. Once I told her to bring me an ax to split wood; when she brought it, I tried to split her head open. I have a great appetite; am never able to satisfy it. If I had killed my sister it would not have worried me at all. I only think of evil. *I dream of shedding blood—I could drink it,*" &c., &c. In the hospital she was the terror of her ward, made many attempts to bite, injure, or slay the patients; yet she deplores her condition.*

It would be easy to multiply cases of this kind,—the books are full of them; but it is unnecessary. These same impulses to evil are sometimes noticed to occur in certain physiological states of the system,—as pregnancy, menstruation, &c. Gall gives four such cases, where women in their ordinary state of health, of perfectly correct moral character, were, when pregnant, violently impelled to steal. A case is quoted in Ray, p. 192, from Freidrich, where a pregnant woman, at other times perfectly honest, suddenly conceived a violent longing for some apples from a particular orchard three miles off. Deaf to all remonstrance, she started off, in company with her husband, on a cold September night, and was caught in the act of stealing. She was tried and convicted; but a commissioner being appointed to examine her sanity, reported that she was not morally free and consequently not legally responsible. The cases heretofore given establish, we think, the fact that Moral Insanity has resulted from injuries, from disease, and occasionally from certain physiological states of the system.

We are next to prove that this moral condition is removed by medical treatment, or, in other words, that it is, like any other disease, *cured by treatment.* The records of any asylum for the insane would afford cases of this sort, and they abound in the books. I shall give one from Esquirol; because while illustrating this point, it affords an excellent type of Moral Insanity.

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* Abridged from Morel.

CASE VI.—M. N., at the age of fourteen years, was apparently in good health; though she had never menstruated, all the other signs of puberty were very marked. At every month she complained of headache; her eyes were red, face flushed, temper very irascible; she often became furiously angry at trifles; her mother was the especial object of her ill-temper, being often overwhelmed with abuse, threats, and maledictions. She made some attempts at suicide, and once threw herself on her mother armed with a knife, evidently eager to shed her blood. When the paroxysm was at its height, blood would flow from the mouth, nose, or even the eyes; then followed tears, a general trembling, coldness of the extremities, cramp-like pains in the limbs, poignant regrets, followed by a long period of depression. This state continued many hours. Sometimes in the paroxysms she would roll on the ground, beat her head against the walls or the furniture, or strike herself with her fists. Her countenance, habitually very mild, became hideous; her face, ears, and neck were deep red; her head burning hot; the feet cold. The paroxysm over, she became mild, begged pardon of her mother, whom she overwhelmed with marks of tenderness. When remonstrated with, she wept and said, "*Why was I made as I am. Would that I were dead—wretch that I am. I cannot control myself when I am in my rage.* I see nothing, and know not what I do."

She often did not remember circumstances that occurred during the paroxysm, and denied with surprise and regret what was told her. *At seventeen, her courses appeared. Soon there remained not the slightest trace of the evil propensities by which she had been so long tormented.* She never had any appearance of intellectual aberration. (Hoffbauer, p. 32.)

CASE VII.—A. B., twenty-one years of age; nervous temperament; gloomy temper; moral nature dull; though deprived of his father at fourteen, he never manifested much affection for his mother. At eighteen his gloom augmented; he avoided society, yet worked industriously in his shop. No manifestation of intellectual aberration in his words or actions. He now avows an impulse to homicide, so strong that at times it would have afforded him pleasure to shed the blood of his mother or sister. When the enormity of this crime is represented to him, and the punishment which awaits it, he coldly replies, "Then I am no longer master of my will." More than once, a few minutes after having embraced his mother, his face would flush, his eyes sparkle, and he would scream out, "*Mother save yourself—I shall kill you.*" Soon after he would become calm, and shed tears. One day he met a Swiss soldier, to whom he was unknown. He sprang on him, and tried by force to seize his sabre to attack him with it.

For six months that he was dominated by these frightful impulses, he

slept little, complained of pain in the head, but manifested no intellectual derangement.

Committed to the asylum at Charenton, he coolly avows his desire to kill his mother and sister—says he has no motive. He was treated by baths and leeches for two months. He has now lost his sanguinary impulses, and his conduct is perfectly regular. Still there are occasional convulsive movements, and his face expresses sadness and discontent. The same treatment continued; and in three months he is more communicative, seeks amusement, visits the common room, is anxious to be discharged, saying that he has no longer any sinister desires. Eighteen months after his arrival he is discharged. He subsequently applies himself with diligence to business; manifests the fondest attachment to his mother and sister, and nothing has since disturbed the calm of his life.

Case VIII.—A young lady, of nervous temperament, and very excitable imagination, was seized with profound melancholy on account of the long absence of her husband. Nothing interested her. She wept often, repeating constantly that she was the most unhappy of women. Her husband returned. His presence, far from diminishing, aggravated her trouble. She was now often tempted to kill her two little daughters, whom she worshiped; while embracing she was often impelled to strangle them; every time she saw them her countenance changed; she was no longer willing to be alone with them. One day, one of her children came alone into her apartment; she was obliged to scream for assistance, and had the child instantly removed. This interesting woman was placed under my care, after having made several attempts to commit suicide. She is isolated, and, after nine months, recovers, sees her husband, but never speaks to him of her children. After several visits, she appeared very well, very reasonable, and even gay. I allowed her to return to her husband. Madame —— goes into the world, does the honors of her house, appearing wonderfully well; but she almost never speaks of her children, who are in the country. When she asks about them, it is in the phrase "How are those little people?" Six months pass. The husband ventures to propose the return of his children. The wife does not reply, but the change in the expression of her countenance shows plainly that the time for that has not yet arrived. Three months pass. She speaks more frequently of her children, and now with interest; in a month more she expresses a desire to see them. Finally, after eighteen months of absence, they return. She overwhelms them with caresses, and sheds torrents of tears. From that moment she occupies herself almost exclusively with them; she directs their education with a tenderness and devotion truly admirable. During the ten months which this lady passed with her husband without her children, her intellect was perfect, though

she was subject to many perturbating causes; among others, a great reverse of fortune. None of these things disturbed, in the least, her mind.

The following cases from the *Annales d' Hygiene et de Medecine Legale* are added, both to show the character of varying forms of Moral Insanity, and to prove, as the second and third clearly do, that the administration of thel aw is as uncertain on the one as the other side of the channel.

CASE IX. A shoemaker aged thirty-five, sober and industrious, rose early to go to his work; soon afterwards his wife was struck with his haggard looks and incoherent talk. He soon seized a hatchet, and attacked his wife with the greatest fury. The neighbors running in, saved her with difficulty and seized him. His face was red, pulse frequent and a little full; he was covered with perspiration, his looks savage, his eyes bright. After noon, he became calm and slept well; in the evening his mind was calm and clear, but he could not remember the events of the morning.

CASE X. The son of a barber strangled his two young brothers, and fled from his home. At three leagues he was met by a gendarme, who asked, "Where are you going?" "I don't know, straight before me." "Have you any money?" "No." "Your father has driven you away?" "No." "Why have you left home?" After a slight hesitation, he replied, "Because I have killed my two little brothers." The boy was instantly arrested, carried to prison, tried and condemned. No sooner was he condemned, than several persons who had known him, and who saw in him only a miserable monomaniac, who, gloomy and taciturn at all times, had "killed his little brothers to make angels of them," interceded for a commutation of his sentence. What said Louis XVIII? "Pardon a monster who has killed his two little brothers! Impossible!" The boy was sent to the guillotine.

CASE XI. Sometime after this execution, a young man of the same city took a great fancy to the child of a neighbor, made it presents of toys, &c., often took it out walking. One day, as they were passing a stream, he threw the child into the water, and calmly continued his walk. The child was rescued. When asked, why he committed this atrocious act, he replied coolly, "Because I wished to die on the scaffold, as my neighbor W. did." He was tried, but the court, warned by the terrible error they had committed in the former case, acquitted the prisoner, who was sent to Bicetre, where he was confined as a lunatic for years.—*Ann. d'Hygiene*, 1836.

The cases which have now been given, and which could be multiplied to any extent from the works of Gall, Esquirol, Prichard, Ray and others, are certainly sufficient to establish the fact, that Moral Insanity does exist; that it is not, as has been asserted, a theory of the doctors,—a thing invented

to cheat the gallows or the prison of their victims,—but a disease, just as well known to those who have studied it, and just as capable of being known to those who will study it, as typhus fever or small-pox.

If this be so, is it reasonable for any body of men, whether judges or lawyers, willfully to shut their eyes against these proofs, and to insist that Moral Insanity does not exist? Is it decent for them to vilify professional men, because, when compelled to appear in a court of justice, they are found unwilling to say that a disease, with which they are, by reading and experience, entirely familiar, is a theory, a myth, a nonentity? But it is objected, First, that the doctrine that Moral Insanity exists, is irreconcilable with moral accountability. To this, it might be sufficient for the medical men to reply,—we are not called on to reconcile any of the facts of our science with any of the dogmas of theology; but we are utterly unwilling that our science should for a moment seem to *be in opposition with religious truth;* we will therefore meet this question fairly. How is the existence of Moral Insanity reconcilable with human accountability? First,—Moral Insanity exists as a disease, and comes of course from Him who at his will blesses His creatures with health, or visits them with disease. It comes from the same All-Wise, All-Powerful Source from whom all our religious knowledge comes, and therefore the one cannot he irreconcilable with the other. His Creation cannot contradict His Revelation. But suppose that it has pleased Him for His all-wise purposes, to visit certain of His children with a malady which, depriving them of moral sense, releases them from moral accountability. Shall we say he has done wrong? Shall the thing formed say to him who formed it, "Why has thou made me thus?" Or, because my afflicted brother by reason of disease cannot know, or knowing cannot obey the law of God, shall I, who do know and can obey, say—I am released from my accountability?

But there is another objection to the admission of the existence of Moral Insanity: "it interferes with the administration of the law." To this there is a very simple answer. If the existence of moral insanity, or of typhus fever, or of the mastodon, interfere with the administration of the laws, then, let the administration of the law be so modified that such interferences shall not take place. The fact cannot be altered: typhus fever, moral insanity, and the mastodon exist and will continue to exist, whether the law ignore or admit their existence. They cannot change; then the law should. But how is it to be changed? That is for the lawmakers to decide, and we do not apprehend that there will be much difficulty in the matter, when once the necessity of change is admitted.

Having thus, as we suppose, established as an indisputable fact, the existence of the disease called Moral Insanity, and having attempted to answer some of the objections which have been made to the doctrine, we will now

pass to the consideration of the second subject on which we proposed to remark,—the legal test of insanity. This has been variously given by different judges and writers; but we suppose that the most authoritative statement yet given, is that by the Twelve Judges of England, in their answers to certain queries propounded to them by the House of Lords in 1843.

They say, "We are of opinion that, notwithstanding the party did the act complained of, with a view, under the influence of insane delusion, of redressing or revenging some supposed injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to the law of the land.

In reference to this test, I shall attempt to establish the following propositions: 1st. As a test of sanity it is utterly futile. 2d. It has not with any uniformity guided the administration of the law, either before it was formally laid down or since; having been disregarded even by some of the judges who laid it down.

3d. When it has guided the administration of the law, the result has been, the perpetration on the scaffold of some of the most cruel murders the history of which disgraces the annals of our race.

To establish the first of these propositions, viz. that the test of knowing right from wrong—whether those terms are used in the abstract, or whether we adopt the modification (if indeed it be one) of the Judges, and restrict it to a knowledge of right and wrong in respect to the very act with which he is charged, it is equally and absolutely futile. It might be sufficient to appeal to the testimony of those who have had charge of insane asylums, and have practical knowledge of insanity; who all concur in the opinion, that a very large majority of those unmistakably insane, do know perfectly well the difference between right and wrong, both abstractly and with respect to the acts they commit. On this subject if we undertook to quote authorities, it would be to cumber our pages with the names of all those who have written on insanity. We will rather give one or two cases which strikingly illustrate this particular point, and go to prove not only a knowledge of the right and wrong of these acts, but a very accurate appreciation of the character of these acts in their relation to the law of the land.

Case XII. A patient in Bethlem Hospital, who was for the most part quiet, orderly and rational, had an irresistible propensity to tear her bedclothes. She was fully aware that she was doing wrong, was always ashamed of it, and continually begged that I (Mr. Wood) might not be told of it. When I attempted to reason her out of this mischievous propensity, and asked her why she persisted in it, she would try to avoid the

question; but, on being pressed for an answer, could only say, "I should not do it, if I were not afflicted."

Who can doubt, in reading this touching case, that this poor girl gave a true and philosophical account of her condition?

CASE XIII. Jonathan Martin, who fired York Minster, knew, when he did it, that the act was contrary to law; indeed, he knew that it was a capital felony, and expected to be hanged for it. He did it, in the language of the Judges, "with a view, under the influence of insane delusion, of producing a public benefit." Yet Martin was acquitted as undoubtedly insane.

James Hadfield, whose case will be hereafter given, knew that the act of firing at the king was a capital felony, and *did it for that very reason*, wishing to be hanged.

But it is needless to multiply cases; for the existence of Moral Insanity of which we hope the reader can now have no doubt, is utterly subversive of this test; and in the second place, we shall have abundant opportunities of illustrating the fallacy of this test, when speaking both of its being neglected in some cases and applied in others.

We shall therefore proceed to give proofs of the truth of our second proposition: viz. this test has not with any uniformity guided the administration of the law, either before or since it was formally laid down by the Twelve Judges; having been, in several cases, entirely disregarded by some of the very judges who laid it down.

CASE XIV. James Hadfield fired at King George III. in Drury Lane Theater. He made no attempt to escape, and when arrested avowed his crime, saying he knew his life was forfeited—he did the act for that reason. He was tired of life, and his plan was to get rid of it. He did not intend to take the life of the king; he knew that *the attempt* only, would answer his purpose.

Now try this case by the test of knowing right from wrong, whether in its naked deformity, as laid down by Justice Tracy in R. *vs.* Arnold, who said "A man must be totally deprived of his memory and understanding, so that he does not know what he is doing, more than an infant, a brute, or a wild beast." Or as given by Lord Lyndhurst on R. *vs.* Offord. "The jury must be satisfied that he did not know what the effect of the act, if fatal, would be, in reference to the crime of murder." Did not Hadfield know what he was doing more than a "brute?" Did he not know perfectly and even accurately, that *the attempt*, even, to kill the king was a capital felony? Yet Hadfield was acquitted as an undoubted lunatic, and remained in Bethlem Hospital for years, unmistakably insane.

CASE XV. D. M'Naughton, after lurking for several days around the house of Sir Robert Peel, finally shot, from behind, a Mr. Drummond, who bore a striking resemblance to Sir Robert. He did this act because he insanely supposed that he had been persecuted by the Tories. M'Naughton's conduct may be described very accurately by transcribing part of the answer given by the Judges. "He did the act complained of, with a view, under the influence of insane delusion, of redressing or *avenging some supposed grievance or injury.*" There could not be the shadow of a doubt that he knew the act was contrary to the law of the land. Now, of such persons the answer of the Judges says, they are punishable. Yet M'Naughton was acquitted on the ground of insanity, Chief Justice Tisdale (one of the judges who presented the answers to the queries of the House of Lords) actually stopping the case when he found that there was no rebutting medical testimony,—several medical men having sworn to their opinion of the prisoner's insanity.

The acquittal of M'Naughton caused a vast amount of popular clamor. It was denounced by the press. Mr. Warren, in Blackwood's Magazine, says of it,—"The acquittal of this cold-blooded murderer horrified and disgusted the public.

"It created," says Mr. Townsend, "a deep feeling in the public mind, that there was some *unaccountable defect* in the criminal law." It was alluded to in both Houses of Parliament, and gave rise, in the House of Lords, to a protracted debate, in which all the great law lords took part; all agreeing that something must be done. It was finally determined to send the queries already mentioned, to the Twelve Judges, to get from them a formal statement of the law. Yet time has shown that this acquittal was right, for we have the testimony of Mr. Wood, medical officer of Bethlem Hospital, that "M'Naughton is now (1852) unquestionably insane."*

CASE XVI. Ross Touchet entered a shooting gallery, and deliberately shot the proprietor, inflicting a wound of which he died, after lingering for eleven months. After firing the pistol Touchet said "he did it on purpose, for he wished to be hanged." There was no evidence of intellectual aberration. Could any case present more indisputable proof that the prisoner "knew, at the time of committing such crimes, that he was acting contrary to the law of the land." Yet he was acquitted as insane.

CASE XVII. Almira Brexley, aged 19, was a nurse in the family of a gentleman in London. She had suffered for some months from amenorrhœa and had been prescribed for by the family physician for that disease; he had never discovered the slightest sign of intellectual aberration, nor had

* Wood on the Plea of Insanity.

the idea of her being insane ever been entertained by any one. One Sunday morning she went into the kitchen; and, selecting a large knife *tried* its edge with her finger; and, when she was asked by a fellow-servant, what she wanted it for, said "to cut Miss Mary's pencil." She was told that a smaller one would answer the purpose better; but said she would take that, as it would answer to cut bread for the children's luncheons. She then went into the nursery, and cut the throat of the baby in his cradle, nearly severing the head from the body, and of course producing instant death. She next rushed into her master's room where he was entertaining company, and exclaimed "Oh what will become of me! I have murdered the dear baby." "Will you, Sir, (addressing her employer) forgive me?" "Will God forgive me?" Neither before nor after committing the homicide, did she manifest the least sign of intellectual insanity. She was tried before Lord Denman, and acquitted on the ground of insanity.

Case XVIII. Alice Snoswell, aged 17, suffering like Brixley from amenorrhœa, being on a visit to a married sister, went into the nursery and cut the throat of a little niece, for whom she had always expressed especial fondness, calling her "my Alice." There was no sign of intellectual disturbances,—no pretense that intellectual aberration existed or ever had existed. She was tried before Justice Park, at the Maidstone Assizes, and acquitted on the ground of insanity.

Case XIX. William Frost, a tanner, who had borne an excellent character, during a period of despondency killed his four children. He washed the handle of the hammer with which he committed the homicide, and afterwards hid it. Surely he knew perfectly well that he had acted contrary to the law; and had intellect enough to attempt to escape punishment. Indeed the case was in this view of it so clear against the prisoner, that the judge (Mr. Justice Williams) formally abandoned the right and wrong test, and charged the jury "that it was not merely for them to consider whether the prisoner knew right from wrong, but whether he was at the time he committed the offense, deranged."*

Having now shown that this test has not guided the administration of the law, having been disregarded both by Chief Justice Tisdale and Lord Denman—two of the judges who united in the answer to the House of Lords, and formally abandoned by Mr. Justice Williams, I believe another of them,—we proceed to establish our third proposition, viz.: Where it has guided the administration of the law, the result has been in some cases the perpetration on the scaffold of judicial murder. First in order of

* London Medical Gazette, *vol.* XLII, p. 255.

time, and first in its display of judicial ferocity, we place the case of Bellingham. Aware that we have used harsh language, we beg the reader, before condemning us, to peruse, calmly if he can, what follows.

CASE XX. On Monday May 11th, 1811, Mr. Spencer Percival, then prime minister of England, was shot in the lobby of the House of Commons, by a man named Bellingham, who had no personal feeling against that most amiable gentleman, but was incited to this miserable homicide by the insane notion, that in this way, and in this way only, he could bring before the public certain claims which he supposed he had against the government. In reply to the frantic cries of the by-standers "Where is the rascal that fired?" he calmly said, "I am that unfortunate man." On his trial, Bellingham's counsel claimed that he was insane; and fortified by strong affidavits, besought of the court for only such brief delay as would be necessary to bring from Liverpool and elsewhere, abundant evidence from parties who had known him from childhood, that Bellingham was and had for a long time been insane. This brief delay was opposed by the then Attorney General, Sir Vicary Gibbs; who insisted that it was clearly a contrivance to delay the administration of justice, to impose upon the court a false belief; that justice would be grossly violated by delay: the affidavits were to retard and weaken justice. These furious denunciations were accompanied by insinuations against the counsel for defence, &c., &c. Sir James Mansfield* refused to grant the delay asked for. The trial proceeded; the Attorney General, fortified, as he said, by the sages of the law, declared that "a man may be deranged in his mind, not having intellect sufficient to conduct the common affairs of life, yet is he answerable to the law for his criminal acts, if he is capable of distinguishing right from wrong." Bellingham, when called on to speak for himself, made a long, rambling harangue, setting forth his claims against the government, and the manner in which justice (as he said) had been denied him. In justification of the homicide, he said that a clerk had, in dismissing him, told him that "now he was at full liberty to take such measures as he thought proper for redress." This Bellingham insisted was a *carte blanche* from the government, and gave him the clear right to do what he pleased. He repudiated, in express terms, the idea of being insane, and thanked the attorney general for objecting to that plea. The whole speech is plainly that of a madman, and ought of itself to have convinced the court of Bellingham's insanity. The judge duly confirmed the law as laid down by the attorney general; Bellingham was found guilty,

* In many of the books it is stated that Lord Mansfield presided at this trial! this is obviously a mistake. Lord Mansfield died in 1793, long before the Bellingham trial.

and hanged. *His crime, commitment, trial, and execution occupied just one week!* Mr. Percival was, as we have stated, shot on Monday, May 11th, 1811. On Monday, May 18th, the dead body of Bellingham had been given to the surgeons for dissection.

To show the condition of mind of this poor wretch, when about to satisfy the ferocity of the law, take the following statement from Blackwood's Magazine, for 1850, p. 564. "A military officer present at the execution of Bellingham, and very near the scaffold, told us that he distinctly recollects B. while standing on the scaffold, elevating one hand, as if to ascertain if it were raining, and saying to the chaplain, in a calm and natural manner, '*I think we shall have rain to-day.*'" It is worthy of remark, that Lord Brougham in the debate on the case of M'Naughton, while condemning the refusal of delay in Bellingham's case, coolly adds, "No one can doubt that, had the proof been obtained, the result would have been the same." Those who desired to satirize the law could not, I think, do it more effectively, than by adding to this remarkable opinion of the learned lord, the "*certainly not*," of the old comedy.

Case XXI. N. Laurence had been arrested for a petty theft, and taken to the police-station, where the inspector, an utter stranger to Laurence, was standing with his back to the prisoner, talking to some friends. Laurence suddenly seized a poker, and struck the inspector a violent blow on the head, which speedily proved fatal. The prisoner admitted that he had no motive for the act, and would have struck any one who had been standing there at the time; he said he was glad he had done it, and hoped the inspector would die, as he wished to be hanged.

It appeared on the trial, that there was no possible cause of quarrel between the parties, but that the prisoner seemed to be actuated by some sudden impulse, for which not the slightest reason could be assigned. This man was hanged. Compare this case with that of Touchet, case XVI.; and can any one doubt that if Touchet was rightly acquitted, Laurence was most wrongfully murdered?

Case XXII. Thomas Bowler was tried for murder, at the Old Bailey, July 2d, 1812. The killing being admitted, the defence was insanity. It was proved by unimpeached testimony, that the prisoner had, about a year before, an attack of epilepsy of great severity, and had ever since been greatly changed in conduct, and conversation. Mr. Washburton, Superintendent of a Lunatic Asylum, swore that he had no doubt of the prisoner's insanity. To place the matter beyond doubt, a commission of lunacy by which, a short time before, the prisoner was declared insane, was produced. Yet all in vain—The judge charged as usual, that, if the prisoner

was capable of distinguishing right from wrong, he was responsible to the law. The jury found Bowler guilty, though, the report adds, *with some difficulty!*

CASE XXIII. William Freeman, indicted in Cayuga county, New York, for murder. In this case there was a preliminary judicial inquiry, as to the sanity of the prisoner, when the jury found him sufficiently sane in mind and memory, to distinguish right from wrong; which was by the court held to be equivalent to a verdict that he was sane in mind. The prisoner was put on his trial, the defence of insanity interposed; but under the operation of the right and wrong test, which was adopted by the presiding judge, the jury found the prisoner guilty. His counsel applied for a new trial, which was granted by the Supreme Court; but before a second trial was had, Freeman died in his cell. A post-mortem examination of the brain was made by Drs. Brigham, M'Call, Fosgate, and others, the result of which was, finding extensive disease of the brain. Dr. Brigham says, "I have rarely found so extensive disease of the brain, in those who have died after long-continued insanity."

To the mind, wearied with the contemplation of the long list of victims to unenlightened jurisprudence, it is refreshing to pause and contemplate the conduct of the counsel of Freeman—the Hon. William H. Seward. His client was a poor, ignorant, half-brutalized negro; yet never had a monarch's cause a more zealous advocate. He fought the battle of humanity from its commencement to its close, with an industry and devotion rarely equaled in the annals of criminal jurisprudence. Popular prejudice was arrayed against him, and political enemies were but too ready to echo the clamor of the unthinking multitude. Yet did none of these things move him. Firm in the conviction of duty, he could say with Milton—

> I bate no jot of heart or hope,
> But still bear up and steer
> Right onward.

To the evidence derived from the above detailed cases, I will now add some authorities upon this subject:—

Dr. Woodward, for many years Superintendent of the Asylum at Worcester, Mass., says, "Of all the cases that have come to my knowledge, and I have examined the subject with interest, for many years, I have known but a single instance in which an individual arraigned for murder, and found not guilty by reason of insanity, has not afterwards shown unequivocal symptoms of insanity, in the jails or hospitals where he has been confined; and I regret to say, that quite a number who have been

executed have shown as clear evidence of insanity as any of these.—*Tenth Annual Report, Worcester Asylum, p.* 73.

To the same effect Dr. Brigham, in his Eighteenth Annual Report for the Hartford Asylum, says, "I know it is a common, but frequently a careless remark, that the plea of insanity is too often successfully adduced as an excuse for crime. So far as I have any knowledge, this is not the case. I do not know of a single instance where the insanity of an individual has been certified to by those well informed and well qualified, by experience with the insane, to judge on such a subject, that time and public opinion has decided to be incorrect."

Dr. L. Bell, of the M'Lean Asylum, says that "for one real criminal acquitted on the score of insanity, there have been a dozen maniacs executed."

I here close my remarks on the third proposition. Can it be doubted that in all its force and in all its apparent harshness, the proposition is true that where this right and wrong test has controlled the administration of the law, the result has been the perpetration upon the scaffold of most cruel murders? Will any one say that the reckless haste that denied to poor Bellingham the few days necessary to establish his defence, was aught less than murderous?

Was the partiality that sent Laurence (Case XXI.) to the gallows, while Ross Touchet (Case XVI.) was spared, any thing but murderous?

Above all, was the hanging of Thomas Bowler (Case XXII.) after he had been, upon due legal investigation, declared insane, and as insane deprived of the control of his property, aught but murder?

But, it will be asked, what must the law do for the protection of our lives and our property? On this subject it is not for a layman to give an opinion; but surely if those who make and those who administer the law are really convinced that something ought to be done, there cannot be any great difficulty, and there should not be any needless delay, in so modifying the law, as to make it conform to the present state of knowledge on the subject of insanity.

But, though unwilling to give any opinion as to what should be done, there is yet one question on which the humblest layman, if only his heart is in his subject, may and must speak boldly. That subject is—What must the law not do? The law must not continue this already too long catalogue of judicial murders. The law must not keep in her rusty armory a test of sanity which every man who has any knowledge of the subject knows to be vain and futile; the law must not keep this relic of an unenlightened age by her, to be brought out, as whim, or chance, or the feeling of the hour may dictate, to slay those whom the Almighty, in his mysterious—most mysterious providence, has visited with a disease compared to which all other and mere physical diseases are but as nothing.

Such beings, instead of being dragged to the scaffold or thrust into the prison-house, should be hallowed by their great misery. The Heathen worshiped the tree that had been struck by lightning; let not Christian men be found less easily moved to sympathy with human sorrows.

Before closing this little tract, I feel it to be incumbent on me to reiterate the statement made in the beginning of it, that I make no pretensions to originality; my materials, derived from Esquirol, Hoffbauer, and especially from the admirable work of our countryman Dr. Ray, have been hastily, and I doubt not unskillfully, put together in the scanty leisure which professional and professorial duties have left me. I now commend my work to the candid consideration of all who desire accurately to know the ascertained facts, on the obscure but most important subject of Moral Insanity.

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